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Nos. 470, 471, 472, and 473

In the Supreme Court of the United States

OCTOBER TERM, 1946

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

GREAT LAKES ELEVATOR CORPORATION ET AL.

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 87–106)[1] is reported in 156 F. (2d) 33.

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[1] All references unless otherwise indicated are to the record in Nos. 470 and 472. References to the record in Nos. 471 and 473 will be referred to as No. 471.

JURISDICTION

The judgments of the court below were entered on June 7, 1946 (R. 107; R. 262 in No. 471). The petitions for a writ of certiorari were filed on September 6, 1946, and granted on October 21, 1946. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The Federal statutes involved are the United States Warehouse Act, 7 U. S. C. 241 *et seq.*, and the Commodity Exchange Act, 7 U. S. C. 1 *et seq.* They are printed as appendices in the briefs of the petitioner Daniel F. Rice & Co.

The State constitutional provision and statutes involved are Article XIII of the Illinois Constitution of 1870, the Illinois Public Utilities Act (Ill. Rev. Stats. 1945, Ch. 111–2/3), and the Illinois Grain Warehouse Act (Ill. Rev. Stats. 1945, Ch. 114, Sections 293–326a). A pamphlet copy of the Illinois Public Utilities Act accompanies the brief of the petitioner Daniel F. Rice & Co.

QUESTIONS PRESENTED

This brief is submitted by the United States, *amicus curiae,* for the purpose of indicating the Government's interest in the substantive question presented by the petitioners in Nos. 470 and 472, which may be stated as follows:

> Has the United States so occupied and preempted the field of regulation of grain warehousemen licensed under the United

States Warehouse Act as to deprive the Illinois Commerce Commission of authority to regulate them under State law in the manner contended by the petitioners?

We will discuss only briefly (pp. 12–15) the substantive question presented by the petitioners in Nos. 471 and 473, which is:

> Has the United States so occupied and preempted the field of regulation of boards of trade designated "contract markets" under the Commodity Exchange Act as to deprive the Illinois Commerce Commission of authority to regulate them under State law in the manner contended by the petitioners?

None of the procedural questions presented by the petitioners is discussed in this brief.

STATEMENT

The respondents in Nos. 470 and 472 are warehousemen engaged in the business of operating public warehouses for the storage of grain in the State of Illinois. The warehouses are operated under licenses issued by the Secretary of Agriculture of the United States pursuant to the United States Warehouse Act, 7 U. S. C. 241 *et seq.* (R. 3).

The respondent in Nos. 471 and 473 is the Board of Trade of the City of Chicago, which is an Illinois corporation operating a commercial grain exchange that has been designated a "contract market" under the Commodity Exchange Act (R. 4).

Daniel F. Rice & Company (hereinafter called "Rice"), one of the petitioners, is an owner, shipper and dealer in grain and is a customer of the respondent warehousemen. The Illinois Commerce Commission (hereinafter called "Commission"), another of the petitioners, is an agency of the State of Illinois with certain regulatory jurisdiction over public utility companies, including public grain warehouses (R. 3–4), and over boards of trade (R. 4–5, in No. 471), operating within the State.

On July 28, 1944, Rice filed with the Commission a complaint against the respondent warehousemen alleging violations of the Illinois Public Utilities Act and the Illinois Grain Warehouse Act (R. 5). The violations alleged are that the warehousemen charge unreasonable, unjust, and excessive rates; pursue discriminatory practices; operate without a State license; fail to obtain Commission approval of contracts and security issues; mix public grain with grain of different grades; fail to file, print, and publish schedules of rates and charges; abandon service without Commission approval; store in their public warehouses grain in which they have an interest; and maintain warehouses in an unsafe condition. (R. 13–21).

The Rice complaint before the Commission also joined the respondent Board of Trade as a defendant for the purpose of compelling changes in the warehousing practices in question through regulations of the Board of Trade. The complaint

alleged that the Board of Trade had adopted and made effective rules with respect to warehousing without first obtaining the approval of the Commission as required by the Illinois Grain Warehouse Act (R. 4–5, in No. 471).

The respondents filed with the Commission motions to dismiss the proceeding on the ground that the Commission was without jurisdiction because the United States Warehouse Act and the Commodity Exchange Act have preempted and occupied the field of regulation of federally licensed warehouses and "contract markets" and have superseded the authority of the Commission to regulate in the manner sought by the Rice complaint (R. 22; R. 20, in No. 471). On October 10, 1944, the Commission denied the motions to dismiss and set the cause for hearing on the merits (R. 24–25 in R. 6, in No. 471).

Thereupon the respondent warehousemen and the respondent Board of Trade filed separate complaints in the District Court for the purpose of enjoining Rice from further prosecuting the proceeding before the Commission, for the purpose of enjoining the Commission from entertaining further jurisdiction of the proceeding, and for the purpose of enjoining the Attorney General of the State of Illinois from instituting any proceeding against the respondents to enforce any order of the Commission in the Rice proceeding. (R. 1; R. 3 in No. 471.) The petitioners moved to dismiss the complaints (R. 34; R. 214,

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in No. 471), and after a hearing the motions were granted by the District Court R. 78; R. 223, in No. 471). The Circuit Court of Appeals for the Seventh Circuit reversed the judgments of the District Court and remanded the cases with directions to overrule the petitioners' motions to strike the complaints and to proceed in accordance with the views expressed by the Circuit Court of Appeals (R. 107; R. 262, in No. 471). The Court wrote a single opinion covering both cases.

The views of the court below with respect to the merits of the controversy in the warehouse cases (Nos. 470 and 472) are that the Commission is without jurisdiction to regulate the respondent warehousemen in the manner contended by the petitioners because (1) the regulatory jurisdiction asserted by the petitioners relates to the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued, (2) such regulation by the State Commission either would conflict with the provisions of the United States Warehouse Act or would plainly and palpably infringe its policy or threaten the primary purpose Congress sought to accomplish, and (3) inasmuch as the United States Warehouse Act was enacted pursuant to the plenary authority of Congress to regulate interstate and foreign commerce, the State law, in the respects invoked by the petitioners, has been superseded by the Federal act (R. 89–104).

It is respectfully submitted that these views of the court below are correct.

SUMMARY OF ARGUMENT

I. The State statute requiring the rules of the Board of Trade dealing with warehousing to be approved by the Illinois Public Utility Commission deals with a subject matter that in general is within the scope of the Commodity Exchange Act. In the present posture of the cases, however, it does not appear that the State law would necessarily overlap or interfere with the administration or operation of the Federal statute.

II. Warehouses used for the storage of grain for interstate or foreign commerce are subject to regulation by either the State or Federal government because the warehousing of grain is not a field of commerce where national uniformity is necessarily essential. Where the power to regulate with respect to commerce exists in both the Federal and State government, the Federal government, sometimes makes only a partial use of its power, and in such event the State may regulate with respect to those phases of the commerce that are left unregulated. However, if Congress fully exercises its power of regulation in a particular field of commerce the Federal regulation becomes exclusive in its application and supersedes any State regulation on the same subject. Whether supersedure results depends upon the intention of the Congress. Congress will be deemed to have intended to supersede a State law if the purpose to do so is clearly manifested, if the policy of the Federal act would be in-

fringed by the enforcement of the State law, or if the Federal and State laws conflict, either specifically or by implication.

III. The United States Warehouse Act as originally enacted in 1916 contemplated dual regulation of federally licensed warehouses by State and Federal governments and made State regulation paramount in the event of conflict. However, the dual system proved to be unsatisfactory and the act was amended in 1931 for the specific purpose of making federally licensed warehouses subject to the exclusive jurisdiction of the Federal government. That intention was clearly evidenced by the language of the amendment and its legislative history.

The United States Warehouse Act is a general regulatory act that was intended to cover the entire field of regulation of federally licensed warehouses used for the storage of agricultural products for interstate or foreign commerce. It is not, as contended by the petitioners, limited in scope. Its broad scope is evident from its legislative history, from the purposes sought to be accomplished in the actual administration of the act, and from an analysis of its provisions. Therefore, when Congress amended the act in 1931 and made exclusive the jurisdiction conferred by the act upon the Secretary of Agriculture with respect to a federally licensed warehouseman, the dual system of Federal-State regulation was terminated and the entire field of regulation was pre-empted by Congress.

IV. The State regulatory laws invoked by the Rice complaint have been superseded by the United States Warehouse Act because they relate to particular fields of regulation that have been specifically occupied by the Federal act, and their enforcement in those fields would plainly infringe the policy of Congress. It is not necessary to show that the provisions of the State and Federal acts are in irreconcilable conflict. It is enough that the proposed State regulation relates to the precise subject matter regulated by the Federal act, because with respect to that subject matter it was the policy of Congress to assume exclusive jurisdiction. Any doubts as to whether the State statute is superseded are resolved by the express declaration of Congressional intent in the Federal act.

A. The rate regulatory provisions of the State law invoked in these cases have been superseded because the United States Warehouse Act provides for regulation of the rates that may be charged by a federally licensed warehouseman for the storage of grain for interstate or foreign commerce. The rates must be fair, reasonable and non-discriminatory, and exclusive jurisdiction to determine those factors is vested in the Secretary of Agriculture. The method of regulation under the Federal act is different from the one provided by the State law. That fact, however, is immaterial, because any attempt by a State agency to prescribe reasonable rates to be charged by a Federal licensee would be in-

consistent with the system of rate regulation provided by Congress.

B. The State statutory provisions regarding discriminatory and preferential practices invoked by the Rice complaint have been superseded because the United States Warehouse Act prohibits all such practices and provides for enforcement of the prohibition by the Secretary of Agriculture.

C. The State law relating to adequacy of services, operation without a State license, and abandonment of services has likewise been superseded because these subjects are governed by the United States Warehouse Act. The act and the regulations of the Secretary issued thereunder provide in considerable detail for regulation of the adequacy of the services provided by a Federal licensee. Further regulation by the State would be duplicative. Any attempt of the State to require a Federal licensee to obtain a State license before engaging in the business of warehousing in accordance with the provisions of his Federal license would be in direct derogation of the Federal act. And the State's lack of jurisdiction over the abandonment of services is a natural corollary of the preceding two conclusions. If a State may not regulate the adequacy of the services provided by a warehouseman or require him to obtain a State license there is no basis for State control of his abandonment of services.

D. The State Constitutional prohibition against a public grain warehouseman's storing his own

grain infringes the policy of the United States Warehouse Act, which is to permit a federally licensed warehouseman to deal in his own grain and to mix it with the grain of other owners if the practice is disclosed. Disclosure of the warehouseman's interest in the grain covered by a warehouse receipt is the extent of the restriction Congress sought to impose, and the State Constitutional prohibition is in conflict with that policy.

E. The State statutory provisions relating to contracts between affiliates or with other public utilities, and relating to the issuance of securities by a warehouseman, probably have been superseded because they are inconsistent with the regulatory policy of the Federal act. The United States Warehouse Act contains no provisions relating specifically to these subjects and the Secretary of Agriculture has not purported to exercise supervisory powers comparable to those allegedly vested in the Illinois Commerce Commission. The conclusion is not free from doubt, but the statutory provisions in question appear to be so closely related to the warehouseman's ability to provide adequate services at reasonable rates as to be part of the field of regulation completely occupied by Congress. The failure of Congress to provide for this type of controls may be said to indicate a Congressional purpose to accomplish its regulatory objectives without the exercise of those controls.

ARGUMENT

NOS. 471 AND 473—THE COMMODITY EXCHANGE ACT

Except for this statement, this brief will not discuss the questions presented in the Board of Trade cases (Nos. 471 and 473). They involve the narrow question of the jurisdiction of the State to require the rules and regulations of the Board of Trade that relate to warehousing to be approved by the Commission before they become effective. Section 194b of the Illinois Grain Warehouse Act requires such approval, but the Board of Trade contends that the requirement has been superseded by the Commodity Exchange Act. The Commodity Exchange Act (7 U. S. C. 1 *et seq.*) provides for the comprehensive regulation of trading in futures on commodity exchanges designated as contract markets by the Secretary. The Chicago Board of Trade is a designated contract market under that act.

The Commodity Exchange Act contemplates that a contract market will adopt rules governing the execution of futures contracts and requires the contract market to file its rules with the Secretary of Agriculture. References to the rules are contained in sections 4, 4a (1), 4a (2), 4a (3), 4b, 4c, 4d 4e, 4f, 4i, 5b, 5a (3), 6a and 6a (2); the filing requirement is in section 5a (1). The act also contemplates the adoption of rules relating to the acceptance of warehouse receipts in satisfaction of futures contracts. Section 5a (7) affirmatively provides that receipts issued by a warehouse licensed under the United States

Warehouse Act must be accepted without discrimination in satisfaction of futures contracts made subject to the rules of the contract market, provided the warehouse meets such reasonable requirements as may be imposed by the contract market on other warehouses as to location, accessibility and suitability for warehousing and delivery purposes. Rules adopted by the Board of Trade with respect to warehousing (R. 96, 155–159, 180) are within the scope of these statutory references.

The delivery of grain and Board of Trade rules governing the conditions under which grain may be delivered in satisfaction of futures contracts are necessary and important incidents in the establishment and maintenance of contract markets under the Commodity Exchange Act. Any Board of Trade rule relating to the delivery of grain on futures contracts which tended to facilitate or make possible the cornering of grain or the manipulation of prices would subject the Board of Trade to loss of its contract market designation and the right to deal in futures. This would be true whether or not the rules governing deliveries related to federally-licensed warehouses or to those licensed by the State, and regardless of whether such rules were sanctioned by or required by the State. The Commodity Exchange Act does not, however, expressly provide for exclusive federal control over the rules of the contract markets; the Secretary considers the rules

only in relation to the specific subjects referred to in the federal statute. The act differs from the United States Warehouse Act involved in Nos. 470 and 472, which specifically declares that the authority of the Secretary shall be "exclusive" and which establishes a detailed scheme of regulation covering the same field as the comparable Illinois statute.

The state law involved in Nos. 471 and 473 requires state approval of contract market rules, all of which must be filed with the Secretary and some of which, at least, have a relation to the scheme of regulation provided by the Commodity Exchange Act. But although there is a possibility of conflict between state regulation of Board of Trade rules relating to warehousing and the administration of the Commodity Exchange Act, until the State Commission acts it cannot be known whether its order will affect, injuriously or otherwise, the policy of the federal statute or its administration, or those rules which are related to that policy. The Government cannot say at the present time that any conflict or interference or overlapping necessarily would result. There can be no doubt, of course, that the State's authority would be limited by the federal Act if the State Commission were to require the Board of Trade to adopt a rule that interfered with the administration or the policy of that Act.

In the remainder of the brief all references are to the parties and issues in Nos. 470 and 472.

I

THE PRINCIPLES OF LAW TO BE APPLIED ARE CLEARLY ESTABLISHED. THE CONTROVERSY RELATES ONLY TO THE MANNER OF THEIR APPLICATION TO THE FACTS IN THIS CASE

The authority of the State of Illinois to regulate public warehouses for the storage of grain was established by *Munn* v. *Illinois,* 94 U. S. 113, and it is not disputed that, unless superseded by Federal legislation, the State's authority extends to the regulation of warehouses used for the storage of grain for interstate or foreign commerce, as well as to warehouses used for the storage of grain for intrastate commerce. The warehousing of grain is not a field of commerce where national uniformity is essential, and in such fields of commerce "either the state or federal government may act." *Cloverleaf Co.* v. *Patterson,* 315 U. S. 148, 155.

However, Congress has the authority to exercise exclusive control over operations in interstate and foreign commerce, and it was conceded in the court below that Congress may, if it wishes, exercise all regulatory power over federally licensed warehouses (i. e., warehouses engaged in the storage of grain for interstate or foreign commerce), to the exclusion of the State (R. 92). See *Prudential Ins. Co.* v. *Benjamin,* No. 707, last Term, decided June 3, 1946.

The tests to be used for determining whether a Federal act supersedes a State statute regulating

interstate commerce have been variously stated, and three of the more recent statements are noted in the margin.[1a] They may be summarized as follows: The problem is one of determining the intention of Congress. Congress will be deemed to have intended to supersede a State act if the purpose to do so is expressly manifested.

A more difficult question arises if Congressional intent is not specifically expressed in the statute. However, the intent of Congress is apparent if the State law conflicts with the provisions of the Federal statute or if the State law would prevent attainment of the Federal policy. If Congress has affirmatively regulated an in-

[1a] "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested [citing cases], or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. [Citing cases.]" *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766.

"Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67.

Where the power to legislate with respect to interstate or foreign commerce exists in both the State and Federal governments, and "where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application." *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, 155–6.

dustry, it will be presumed that Congress did not intend the same field to be regulated by another sovereign. This is particularly true in the cases in which the regulatory statute confers discretion on the Federal agency. In that event, even though the State enacts a similar regulation to be administered by state officials, a conflict in administration would result and the State statute would be superseded. The essence of the problem is whether the State law by its terms, by implication, or by its practical administration would impair Federal policy or would conflict with the Federal act.

When it has been determined that Congress intended to occupy a field exclusively, the question may still arise as to whether the State law operates in the field that the Federal government has preempted. The subject matter of the Federal statute is determined by an examination of the provisions of the statute and its Constitutional purpose. In general, it may be said that the field occupied by a Federal regulatory statute includes matters ancillary to that field or so closely related to it as to be part of the basic subject matter covered by the Federal statute. *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148.

The State of Illinois has provided in its constitution and by statute for regulation by the Illinois Commerce Commission of all public warehouses engaged in the storage of grain for compensation. Congress has provided in the United

States Warehouse Act for regulation by the Secretary of Agriculture of warehouses used for the storage of grain for interstate or foreign commerce if the warehouseman applies for and receives a Federal license. The question is whether the Federal act supersedes in whole or in part the provisions of the State law when applied to federally licensed warehouses.

II

THE UNITED STATES WAREHOUSE ACT AS AMENDED IN 1931 WAS SPECIFICALLY INTENDED TO SUPERSEDE ALL STATE REGULATORY LAWS APPLICABLE TO FEDERALLY LICENSED WAREHOUSES. THAT INTENTION IS CLEARLY MANIFESTED BY THE PROVISIONS OF THE ACT AND BY ITS LEGISLATIVE HISTORY

The United States Warehouse Act consists of thirty-three sections that provide in considerable detail for licensing and regulation by the Secretary of Agriculture of warehouses in which agricultural products are stored for interstate or foreign commerce. However, the act as originally enacted in 1916 (39 Stat. 486) recognized the existence of State regulatory systems and made the Federal act subservient to State laws in the event of conflict. Section 29 provided that:

> * * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of

> Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *

Furthermore, section 6 required an applicant for a Federal warehouse license to provide a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the state, district or territory in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder."

With reference to this dual system of regulation, Congressman Lever, Chairman of the House Committee on Agriculture, made the following remark on the floor of the House of Representatives when H. R. 9419, 64th Congress, which became the United States Warehouse Act, was under consideration:

> I wish also to point out very distinctly that the system proposed here can not interfere with any system organized under State or local authority. I recognize the value of State and local systems of warehousing farm products and I would not in the least hamper them. I believe emphatically that there is ample work for both systems to do and that the two will quickly harmonize their efforts and aims. (Cong. Rec. Vol. 53, pt. 6, April 11, 1916, page 5925.)

The hope for harmonious operation of the dual system of regulation proved to be illusory, however, and in 1931 section 29 was amended for the express purpose of permitting federally licensed warehouses to operate without complying with State regulatory laws.[2] Section 29, as amended, 46 Stat. 1465, reads as follows:

> In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; *but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect * * * [Italics supplied.]

At the same time, section 6 was amended to omit the requirement that the bond be conditioned on compliance with the laws of the State, district or territory in which the warehouseman conducts his business (46 Stat. 1463).

The language of the amendment clearly indicates that federally licensed warehouses were intended thereafter to operate independently of State regulatory laws. The regulatory provisions of the Federal act were expressly made exclusive

[2] The amendment was enacted at the request of the Department of Agriculture (H. Rept. 4, 71st Cong., 1st Sess., p. 5; S. Rept. 1775, 71st Cong., 3d Sess., p. 3).

for warehousemen licensed under the act. This intention is made abundantly clear by the House Committee and the Senate Committee reports that explain the purpose of the amendment. The Senate Committee report says:

> Section 29 of the act now provides "that nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen," etc. The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected, there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom. It does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and *if it is decided to secure a license under the Federal act then the*

warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. *In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency.* [Italics supplied.] (S. Rept. 1775, 71st Cong., 3d Sess., p. 2.)

The House committee report said:

Under section 29 of the law as at present, if the Federal act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that

> *the Federal law can be negatived by State legislation.* This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain. Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. *To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom.* [Italics supplied.] (H. Rept. 4, 71st Cong., 1st Sess., pp. 4–5.)

That Congress understood that a federally licensed warehouse might lawfully operate without a State license is indicated by the language used in Section 5a (7) of the Commodity Exchange Act, 7 U. S. C. 7a (7). This section, added to the Act by amendment in 1936, requires that receipts issued under the United States Warehouse Act be accepted in satisfaction of futures contracts "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State."

The position of the petitioners and of the National Association of Railroad and Utility Commissioners, in its brief *amicus curiae* in support

of the petition for a writ of certiorari, may be summarized as follows: The petitioners recognize that the Federal act by its express terms provides that the authority conferred on the Secretary of Agriculture by the act is "exclusive" with respect to Federal licensees. Their contention that the State statute is not superseded is based on two arguments: First, petitioners argue that the Federal statute is a narrow, limited statute that does not occupy the entire field of warehouse regulation. It is not disputed that the Federal statute contains provisions dealing with rates, discrimination, and other matters covered in Rice's complaint. Petitioners urge, however, that the State statute embodies a better method of regulation than the one contained in the United States Warehouse Act, and that the State statute deals with the subject matter in a way that is not in conflict with the Federal statute. Petitioners' second argument is that the amendment to Section 29 did not mean that Federal regulation was intended to exclude State regulation of federally licensed warehouses, but only to make Federal regulation supreme in the event of an actual conflict.

Petitioners' arguments are based on an erroneous premise and ignore the clear language of the United States Warehouse Act and its legislative history. There is little doubt that Congress intended Federal regulation to be "exclusive" in the field covered by the statute and not merely

supreme in the event of conflict. The United States Warehouse Act is a comprehensive regulatory statute. This is shown by the terms of the act, its history, and its actual administration. The State act regulates the same basic subject matter.

It is the Government's position that State statutes are expressly superseded in the field covered by the Federal statute. The field occupied by Congress is measured by the scope of the Secretary's authority under that act. Obviously, a State statute dealing with a matter that is not ancillary to or directly related to the field of Federal regulation is not superseded. For example, the State is not foreclosed by the Federal Warehouse Act from adopting suitable labor regulations, fire control ordinances,[3] zoning laws, or other statutes dealing with subject matter not covered by the Federal statute. It is only in the field in which the Secretary's authority is exclusive that the State statute is superseded.

The conclusion that the State warehouse statute is superseded is supported by the decision of the Supreme Court of South Dakota in *In re Farmers Cooperative Association,* 8 N. W. (2d) 557, the only case that has considered the question whether the Congress has preempted the field of regulation of federally licensed warehouses. In that case, the South Dakota Public Utilities Commis-

[3] See *Edward R. Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 59 N. E. (2d) 689 (1945).

sion instituted a proceeding to require a federally licensed warehouse to obtain a license to operate under the State statute. Before a license could be granted under the State law, the warehouseman was required to file a bond with the Commission, and by acquiring a State license the warehouseman would be subject to State regulation of rates, receipts, and other matters relating to warehouse business and methods. After examining the Federal statute and its legislative history and comparing it with the State law, the court concluded that the State law was superseded. The court stated (p. 562):

> The collision between these acts is head on. It is but a question of which master the Cooperative [warehouse] must serve.

The South Dakota statute was in many respects similar to the Illinois statute involved in these cases. It was a comprehensive regulatory statute dealing with most aspects of the warehouse trade. The reasoning of the court in that case leads to the conclusion that the Illinois statute is superseded.

In *Edward R. Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 59 N. E. (2d) 689, the appellate court of Illinois concluded that a municipal fire control ordinance was not superseded by the United States Warehouse Act. In the course of its opinion the court discussed the decision of the Supreme Court of South Dakota

in *In re Farmers Cooperative Association, supra,* (p. 253):

> Plaintiffs place great reliance upon the case of In re Farmers Cooperative Ass'n, * * * 8 N. W. (2d) 557, decided by the Supreme Court of South Dakota in March 1943. That case involved the validity of an Act of the state legislature prescribing over-all regulation of the business as to the storage, grading, mixing, weighing, etc., of grain, and the receipts issued therefor. The Act was similar in scope to the United States Warehouse Act, the aim of which is to secure fair and uniform business practices, and to facilitate and safeguard commerce in agricultural products. This decision and the argument of plaintiffs predicated thereon might be applicable if we had under consideration Illinois state legislation relative to the warehousing of grain, which covers substantially the same field as the South Dakota and federal legislation, but they are totally inapplicable when applied to an ordinance like the one before us, which attempts to deal only with conditions in the building affecting fire and explosion hazards and which is designed, not to regulate the occupation of warehousemen as such, but the place in which the grain is stored.

This statement would appear to indicate that the Illinois courts would agree with the court below as to the invalidity of the State law involved in these cases.

The United States Warehouse as originally enacted was not, as contended by petitioners, primarily a warehouse receipts act of limited regulatory scope. It was a general regulatory act designed to correct loose and harmful practices of warehousemen that were detrimental to the interests of farmers and to the economic structure of the nation. It was intended to encourage the proper storage of agricultural products by farmers, to correct abuses in connection with the storage of agricultural products in public warehouses, and to develop a sound system of warehouse receipts that would make stored agricultural products recognized collateral for loans. In order to accomplish that result, the act provided for the issuance of Federal licenses to warehousemen who agreed to comply with the provisions of the act and with the regulations issued thereunder, and for detailed supervision of the licensees.

The purposes of the act were stated in House Report No. 60, 64th Congress, 1st Session, page 1, as follows:

> The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of

> proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.
>
> The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government * * * would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products.

Each of these purposes contemplates more than the mere regulation of the form of warehouse receipts. If Congress had intended to provide only for that type of regulation it would in all probability have enacted legislation similar to the Uniform Warehouse Receipts Act, which had been adopted by 32 states and the District of Columbia at the time Congress had the subject under consideration.[4]

The purposes sought to be accomplished in the actual administration of the act were further described in United States Department of Agricul-

[4] 3 Uniform Laws, Annotated, vii.

ture Miscellaneous Circular No. 51, dated January 1926, entitled "The Farmer and the United States Warehouse Act," as follows:

> In enacting the law Congress had in mind accomplishing several objects. The economic loss sustained annually by the country through farmers storing their products improperly, or not at all, amounted to many millions of dollars. One of the first objects then which the law aimed to accomplish was to eliminate this waste. That meant the law must contain some provisions which would afford an incentive to the farmer to store his products. This incentive, it was hoped, would be afforded by providing a means for orderly marketing, that is, *a means which would permit the farmer to store a part of his product following harvest and not throw it all on the market at one time, thereby depressing market prices.*
>
> Of course, Congress recognized that losses had occurred and were constantly occurring in warehouses and that farmers were frequently left with a warehouse receipt but without the products represented by the receipt. Naturally, with such experiences, the farmers were reluctant to store their products in public warehouses. This condition was due entirely to dishonesty on the part of the warehousemen. ***Congress, therefore, recognized that any law it might pass must break up loose and dishonest practices in warehousing.***

> Congress also recognized that orderly marketing was impossible for many farmers unless some means could be developed to get money to the farmer until such time as his entire crop might be sold. * * * The very products which the dealers were buying from the farmers were being paid for by money obtained from bankers who took warehouse receipts on other agricultural products as security for the loans. The way to orderly marketing therefore seemed through the warehouse receipt. *At one stroke, then, Congress aimed to encourage proper storage, to correct abuses and evil practices in warehousing, to encourage orderly marketing, and to develop a form of warehouse receipt which would be acceptable to bankers generally as security for loans on agricultural products.* [Italics supplied, pp. 1–2.]
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> * * * * *
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> Merely licensing warehousemen and inspectors, weighers, and graders will not put life into a warehouse receipt. *There must be rigid supervision of such licensed persons to see that they comply with the law and the Secretary's regulations. Such supervision is given by a force of examiners operating under direction of the Secretary of Agriculture.* [Italics supplied, p. 3.]

It is clear from this alone that the characterization of the act as one intended primarily to establish a workable warehouse receipt system is mis-

leading, and that the assertion that the act was intended to accomplish nothing else is erroneous. It is true that the act was intended to establish a warehouse receipt system. The lack of an adequate system created the principal need for regulation of the warehousing business. But a workable warehouse receipt system is an end product that can be attained only by means of detailed regulation of the warehousing business itself, and the petitioner's characterization of the act should not be used to obscure the fact that such regulation is provided. The House Committee report that explained the purpose of the act stated the need for extensive regulation in order to support a sound warehouse receipt system in the following words:

> We are seeking in this bill to put farm products in such position that they may assert their full value and strength [as a source of credit], and this can be done only through a system which assures to the investor their *quality, quantity, and safekeeping* and at the same time affords him an investment which is readily negotiable [H. Rept. No. 60, 64th Cong., 1st. Sess., p. 2]. [Italics supplied.]

A brief analysis of the provisions of the act is sufficient to indicate that they provide a comprehensive system of regulation. The Secretary of Agriculture is authorized to issue, upon application, a license to a warehouseman engaged in

the business of storing agricultural products for interstate or foreign commerce if the warehouseman agrees to comply with the provisions of the act and with the regulations of the Secretary issued thereunder (Section 4). Such warehouseman is then authorized to represent himself to be federally licensed and bonded (Section 8). With respect to the operation of a federally licensed and bonded warehouse, the act provides for:

(1) The determination of the suitability of the warehouse for the storage of agricultural products (Section 3).

(2) The prescription of the duties of the warehouseman with respect to his care of and responsibility for stored agricultural products (Section 3).

(3) The determination of the competency of persons employed in the warehouse to inspect, sample, classify according to grade or otherwise, and weigh agricultural products (Section 11). All persons so employed must be licensed by the Secretary (Section 15).

(4) The prescription of standards for determining the quality and value of stored products (Section 19).

(5) The approval of the adequacy and amount of a bond to secured the faithful performance of the obligations of the warehouseman (Section 6).

(6) Nondiscriminatory practices by the warehouseman (Section 13).

(7) Reasonable storage rates (Section 25).

(8) Segregation of stored agricultural products (Section 16).

(9) Mingling of fungible agricultural products of the same kind and grade (Section 16).

(10) Issuance of warehouse receipts, their form, contents and cancellation (Sections 17, 18, 20 and 22).

(11) Prompt delivery of stored products (Section 21).

In addition, the Secretary of Agriculture is given authority to:

(1) Investigate warehousing practices generally (Section 3).

(2) Inspect warehouses operated by licensees or applicants for licenses (Section 3).

(3) Classify warehouses (Section 3).

(4) Examine the agricultural products stored in licensed warehouses (Section 24).

(5) Assess reasonable fees for conducting examinations and inspections and for granting licenses (Section 10).

(6) Require licensees to make reports and to make records available for inspection (Sections 23 and 27).

(7) Issue rules and regulations necessary to carry out the provisions of the act (Section 28).

Finally, the act provides sanctions in the form of:

(1) Revocation of a license for violation of the provisions of the act or regulations issued thereunder (Sections 12 and 25).

(2) Publicity for certain types of violations (Sections 24 and 26).

(3) Criminal penalties for other types of violations (Section 30).

Detailed rules and regulations have been issued by the Secretary of Agriculture to implement the regulatory system authorized by the act (7 C. F. R. 102 *et seq.*).

Petitioners and the National Association of Railroad and Utilities Commissioners refer to various provisions in the Illinois Public Utilities Act that are said to be contained in most State regulatory laws applicable to warehouses and that are said to have no counterpart in the United States Warehouse Act. The purpose of the comparison is to support the contention that the Federal act does not occupy the general field of warehouse regulation. The comparison, however, does not accomplish its purpose. Six of the provisions relate to rates, rebates, and reparations for overcharges, and the Federal act specifically occupies that field of regulation by providing for the revocation of a warehouseman's license if he charges unreasonable or exorbitant rates or violates the prohibition against discrimination (Section 25). A discussion of this point is contained in the following section of this brief (*infra*, pp. 44–56). Another provision relates to the evaluation of utility property, which presumably is undertaken for rate-making purposes. Some of the procedural subjects referred to are covered by the Fed-

eral act and some are not.[5] Without commenting upon each provision of the Illinois Public Utility Act that is cited, it is submitted that the analysis of the Federal act contained in the preceding paragraphs of this brief demonstrates the general regulatory nature of the act, and that it does not, as asserted by petitioner, omit most of the provisions ordinarily contained in a regulatory statute.

It is undisputed that prior to the 1931 amendment of the act a federally licensed warehouseman was subject to dual regulation by State and Federal governments. Both governments could occupy the same field of regulation as long as their regulations did not conflict, and in the event of a conflict the State regulation prevailed. The Federal and State governments did occupy the same field of regulation and conflicts resulted.[6] In order to remedy the situation and to strengthen the Federal act, Congress enacted the 1931 amendment to Section 29.

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[5] The Federal and State acts both contain express provisions for investigation and hearing. The Federal act, however, does not contain some of the detailed provisions found in the State act relating to complaints and notice, attendance of witnesses and depositions, issuance of order, record, and judicial review. The regulations issued by the Secretary provide for the issuance of a complaint and notice (7 C. F. R. 102.9), for submission of evidence by affidavits, oral hearings, notice to interested persons, testimony under oath, and depositions (7 C. F. R. 102.99).

[6] S. Rept. 1775, 71st Cong., 3d Sess., p. 2.

Although the conflict between Federal and State regulation prompted enactment of the 1931 amendment, the amendment did not continue the system of dual regulation and merely reverse the relationship between Federal and State law by making the Federal act, rather than the State law, paramount in the event of conflict. Congress could have adopted that solution of the problem, but it did not do so. To the contrary, it chose to remedy the difficulty by terminating the dual system of regulation. The amendment specifically provides that the Secretary's jurisdiction under the act "shall be exclusive" with respect to a federally licensed warehouseman "so long as said license remains in effect." The intention to relieve a federally licensed warehouseman from regulation by a State, in so far as his interstate and foreign commerce activities are concerned, is clear from this language of the amendment, and is made unmistakable by the Senate Committee report. The Committee said:

> It [the amendment] does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and *if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible*

to the Federal act. [Italics supplied.] (S. Rept. 1775, 71st Cong., 3d Sess., p. 2.)

The petitioners argue[7] that the 1931 amendment to Section 29 did not terminate the dual system of regulation because the amended section still provides that the Secretary of Agriculture "is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers." From this provision the inference is drawn that Congress assumed that non-conflicting State regulation of federally licensed warehouses would continue.[8] It is submitted that the court below correctly reached a contrary conclusion when it said that it is more likely that "Congress by this language recognized the existence of state laws over all warehouses even though they were instru-

[7] Brief of the Rice petitioners in Nos. 470 and 472, pp. 37, 42. Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, pp. 56–57.

[8] The petitioners rely particularly on the language the Court used in *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, at p. 209. In that case the Court held that a State statute requiring federally licensed customhouse brokers to secure a certificate authorizing the broker to do business within the State was not superseded by Federal regulations relating to customhouse brokers. In reaching its decision the Court emphasized the fact that a Federal regulation required a Federal licensee to secure a certificate authorizing it to do business in the State. It was in the light of these facts that the Court stated, "Where the Government has provided for collaboration the courts should not find conflict." P. 209.

mentalities of interstate commerce unless and until they had made application and obtained a license under the federal Act" (R. 97). It is important to note that Section 29 as originally enacted authorized the Secretary of Agriculture to cooperate with State officials for the purpose of securing through such cooperation the enforcement of the provisions of the Federal act, but that the amended Section 29 omits the reference to the purpose of cooperation and includes in the sentence authorizing cooperation the qualification that the jurisdiction of the Secretary shall be exclusive with respect to a federally licensed warehouseman "so long as said license remains in effect." Obviously, the purposes of the Federal act are now to be accomplished by direct regulation of federally licensed warehousemen, and the provision for cooperation with the States relates to cooperation in the regulation under State law of warehousemen that do not store agricultural products for interstate or foreign commerce or that do not elect to obtain a Federal license.[9]

[9] The petitioners point to the fact that specific references are made to State law in sections 18 and 20 of the Warehouse Act, 7 U. S. C. 260, 261. Section 18 provides that unless otherwise required by State law, the receipt issued to a depositor of other than fungible agricultural products may omit compliance with subsection (g) of section 18 relating to the grade or class of the particular products. Section 20 provides for the issuance of a substitute receipt when the original is lost provided the issuance complies with any applicable State or Federal law. The express references to State laws indicate merely that with respect to these particu-

Petitioners rely on *United States* v. *Hastings*, 296 U. S. 188, in support of their argument that the United States Warehouse Act does not cover the entire field of warehouse regulation. That decision has no direct bearing on the issues in these cases. In the *Hastings* case, the Court held that a criminal indictment brought under Section 30 of the United States Warehouse Act was insufficient because it failed to allege that the bales of cotton stolen from the federal warehouse had been stored for interstate or foreign commerce.[10] The decision dealt solely with the question of the "scope of the penal provision" in the warehouse act (p. 195). It is significant, however, that the Court referred to the 1931 amendment and pointed out that section 29, as amended, asserts the exclusive authority of the Secretary so far as it relates to the authority conferred by the United States Warehouse Act (pp. 197, 199). While the decision supports the conclusion that the authority of the Secretary is exclusive, the Court did

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lar matters the Congress intended that State statutes shall not be superseded by Federal law. In any event, the field in which State statutes are applicable under sections 18 and 20 of the Warehouse Act is very narrow and is not involved in this action.

[10] The record shows that *all* warehouse receipts issued by the respondents during the periods covered by the affidavits in the record recited that the grain covered by the receipts was received for storage in the course of interstate or foreign commerce, and that all except a negligible percentage of the grain so stored actually moved in interstate or foreign commerce (R. 49–62).

not discuss the scope of the Secretary's authority and the decision, therefore, is not helpful on the question whether the Illinois statute regulated the same subject matter as the Federal act and is therefore superseded.

The petitioners also rely on *Townsend* v. *Yeomans,* 301 U. S. 441, as showing that the United States Warehouse Act covers a limited field of regulation. That case did not involve the United States Warehouse Act, but the Court (p. 457) referred by way of analogy to its decision in *Federal Compress Co.* v. *McLean,* 291 U. S. 17, where it held that although the Federal Government exercises "a measure of control" over federally licensed warehouses, the Federal control does not make the warehouses instrumentalities of the Federal Government exempt from State taxation. In neither the *Townsend* nor the *McLean* case did the Court consider the scope of the Warehouse Act so far as it relates to supersedure of State regulatory standards. The decision in the *McLean* case turned on the question whether a State tax on a tobacco warehouse was valid, an issue different from that involved here. See *Binderup* v. *Pathe Exchange Inc.,* 263 U. S. 291, 311.

Summarizing, it is submitted that the United States Warehouse Act was intended and is administered as a general regulatory act; that, as originally enacted, it contemplated a dual sys-

tem of regulation by Federal and State governments; that both the Federal and State systems occupied the same general field, but State regulations were made paramount in the event of conflict; that the dual system of regulation, with its resulting conflicts, detracted from the efficacy of the Federal system; and that Congress remedied the difficulty by amending the Federal act in 1931 to make the regulatory jurisdiction of the Secretary of Agriculture over federally licensed warehouses exclusive. Congress chose to terminate the dual system of regulation rather than, as contended by the petitioners, to continue it and merely make the Federal regulation supreme in the event of conflict.

III

THE UNITED STATES WAREHOUSE ACT AS AMENDED IN 1931 SUPERSEDED THE STATE LAWS INVOKED BY THE RICE COMPLAINT BECAUSE ENFORCEMENT OF THE STATE LAWS WOULD INFRINGE THE POLICY OF THE FEDERAL ACT

In the foregoing section of the brief it has been shown that Congress expressly assumed exclusive jurisdiction to regulate warehouses licensed under the United States Warehouse Act. By its terms, the act provides that the authority conferred on the Secretary is "exclusive," thus making inoperative State regulatory laws.

Even if Congress had not made this express statement of intent, we believe that the State

regulatory statute would be superseded because it relates to the specific field of regulation covered by the Federal act. Since the Federal act confers discretion on the Secretary of Agriculture within the standards provided by the act, there would be a conflict of administration even if the State act adopted the same standards. It is not necessary, therefore, to show that the particular State regulation is in direct and irreconcilable conflict with a particular provision of the Federal act. It is sufficient if the State act covers the same subject matter. It makes no difference whether the State act differs from the Federal act if the differences relate to matters that are ancillary to that field or so closely related to it as to be part of the basic subject matter covered by the Federal act."[11] If any doubt remained as to the supersedure of the State act, that doubt would be resolved because of the express declaration by Congress that in the field covered by the United States Warehouse Act the authority of the Secretary shall be "exclusive."

[11] *Charleston & Car. R. R.* v. *Varnville Co.*, 237 U. S. 597; *Missouri Pacific* v. *Porter*, 273 U. S. 341; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Ill. Gas Co.* v. *Public Serv. Co.*, 314 U. S. 498; *Southern Ry. Co.* v. *R. R. Comm. of Ind.*, 236 U. S. 439; *Oregon-Washington Co.* v. *Washington*, 270 U. S. 87; *Napier* v. *Atlantic Coast Line*, 272 U. S. 605; *N. Y. Cent. R. R. Co.* v. *Winfield*, 244 U. S. 147; *Hines* v. *Davidowitz*, 312 U. S. 52; *Chic. R. I. & Pac. Ry. Co.* v. *Hardwick Elev. Co.*, 226 U. S. 426; *Adams Express Co.* v. *Croninger*, 226 U. S. 491.

A. The rate regulatory provisions of the State law invoked by the Rice complaint infringe the policy of the United States Warehouse Act

The Rice complaint charges that the respondents are unlawfully maintaining unjust, unreasonable, excessive, exorbitant and discriminatory rates in violation of State law (Pars. 7, 13 (g); R. 16, 19) and requests the Illinois Commerce Commission to fix just, reasonable, nondiscriminatory and nonpreferential rates for the public storage of grain (Par. 16 (f); R. 21). The rates in question are rates for the storage of grain in the course of interstate or foreign commerce (R. 49–62).

The United States Warehouse Act and the regulations issued thereunder [12] contain the following provisions with respect to rates charged by a warehouseman licensed under the Act:

(1) The warehouseman is prohibited from making any unreasonable or exorbitant charge for services rendered (7. C. F. R. 102.35).

(2) The warehouseman is required to receive agricultural products for storage without making any discrimination between persons desiring to avail themselves of his warehousing facilities (Section 13, 7 U. S. C. 254).

[12] The Secretary of Agriculture is authorized by Section 28 of the Act to make such rules and regulations as he may deem necessary for the effective execution of the provisions of the Act. The validity of the rules and regulations issued by the Secretary is not in dispute.

(3) Before obtaining a license, an applicant must file with the United States Department of Agriculture a schedule of charges to be made by him if licensed (7 C. F. R. 102.35).

(4) After he has received a license, the warehouseman may not change the schedule of rates on file with the Department of Agriculture until after he has filed with the Department a statement showing the proposed change and the reasons therefor (7 C. F. R. 102.35).

(5) A current schedule of charges must be kept posted in a conspicuous place at the principal office of the warehouseman (7 C. F. R. 102.35).

(6) Every person licensed under the act is required to furnish the Department immediately any information that comes to his attention tending to show that any provision of the Act or of the regulations issued thereunder has been violated (7 C. F. R. 102.98), and the premises, books and records of the warehouseman are subject to inspection at any time by representatives of the Secretary of Agriculture (7 C. F. R. 102.39).

(7) The Secretary of Agriculture may, after an opportunity for hearing, suspend or revoke the license of the warehouseman if he has made unreasonable or exorbitant charges or if he has discriminated between persons desiring to use his warehousing facilities (Section 25, as amended, 7 U. S. C. 246).

These provisions of the Federal act and regulations provide a complete system for regulating the rates charged by a federally licensed ware-

houseman. He is required to charge reasonable, nonexcessive and nondiscriminatory rates,[13] and a procedure is provided for enforcing that obligation. An applicant for a license is required to submit to the Secretary of Agriculture a schedule of rates proposed to be charged that he believes to be reasonable. If the Secretary concurs in the reasonableness of the schedule, and if the applicant is otherwise qualified, the Secretary will issue the license. If he determines that the proposed rates are unreasonable and the applicant declines to submit an acceptable schedule of rates, the Secretary may refuse to issue the license.[14]

After a license has been issued on the basis of the schedule of rates on file with the Secretary, the warehouseman must charge the rates contained in that schedule until it is changed in ac-

[13] The requirement in Section 13 of the act (7 U. S. C. 254) that a licensed warehouseman receive agricultural products for storage without discrimination between persons desiring to use his warehousing facilities is comprehensive in scope and precludes rate discrimination. A common method of discriminating between persons seeking to use warehousing facilities is to charge them different rates.

[14] It is the practice of the Department of Agriculture at the time application is made for a license to investigate the proposed licensee and his warehouse; in the course of that investigation the schedule of rates that he proposes to charge are examined and considered. If the Department objects to any proposed rate or rates, the matter is handled by negotiation between the representative of the Department and the prospective licensee. In a substantial number of cases warehousemen have changed their rates as a result of the negotiations prior to the time that the Federal license was issued.

cordance with the procedure prescribed in the regulations. If he wishes to change the schedule of rates he must first file with the Secretary a statement showing the proposed change and the reasons therefor. If the Secretary considers the proposed change to be reasonable, he need take no action and the warehouseman may put the change into effect. If the Secretary considers the proposed change to be unreasonable and the warehouseman refuses to acquiesce or to submit a substitute rate that is acceptable to the Secretary, the Secretary may initiate a proceeding to revoke the warehouseman's license.[15]

If a customer of a licensed warehouseman should believe that he has been charged an unreasonable, exorbitant or discriminatory rate in violation of the provisions of the act and regulations, he may submit the necessary information to the Department of Agriculture, which will determine whether it warrants the initiation of a

[15] 7 C. F. R. 102.9 provides that: "* * * Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 102.99 [Reg. 2, sec. 7]."

7 C. F. R. 102.99 provides for the submission of evidence by affidavit, oral hearings on request, notice to interested persons, testimony under oath, and depositions of witnesses.

proceeding for the suspension or revocation of the warehouseman's license.[16]

In this manner Congress has completely occupied the field of rate regulation. The method of regulation varies from the one provided by the laws of Illinois because regulation is accomplished by means of withholding, suspending or revoking a license under the United States Warehouse Act rather than by means of direct prescription of the rates to be charged. A warehouseman is entitled to receive and to do business under a Federal license as long as he maintains on file with the Secretary of Agriculture and charges rates regarded by the Secretary as reasonable. The reasonableness of the rates, however, is a matter solely for determination by the Secretary and any attempt by a State agency to prescribe the rates to be charged by a Federal licensee manifestly would be inconsistent with the system of rate regulation provided by Congress. The jurisdiction to control the reasonableness of rates that is conferred by the act upon the Secretary of Agriculture is exclusive (Section 29).

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[16] An illustration of the method followed by the Department of Agriculture is shown by a case in 1942 involving a proposed changed by a warehouseman of rates in such a way that any person other than the original depositor who withdrew the grain would be compelled to pay a higher storage rate than the original depositor. Upon the complaint of a customer of the warehouseman, the matter was investigated, and following a statement of the objections of the Secretary the amended schedule of rates was withdrawn.

The National Association of Railroad and Utilities Commissioners asserts on page 22 of the brief filed in support of the petition for a writ of certiorari in No. 470 that the Secretary is not required either to approve or to disapprove a schedule of rates submitted by a licensee or by an applicant for a license, and that it is a well-settled rule that the mere acceptance of a schedule of rates for filing does not imply that the schedule has been approved.[17] However, a schedule of rates submitted to the Secretary of Agriculture is not merely accepted for filing. On the contrary, it is made the basis for affirmative action in the case of an initial application for a license, and it may be made the basis for affirmative action in the case of a change in rates by a licensee. An initial license is granted only after the reasonableness of the rates proposed to be charged by the applicant has been considered and a determination has been made that the rates are *prima facie* reasonable. That determination is subject to reconsideration by the Secretary, of course, upon complaint or upon the basis of facts revealed by

[17] The case of *Interstate Commerce Commission* v. *Cincinnati, etc. Ry. Co.*, 167 U. S. 479, 504, cited in support of the "well-settled rule" does not announce or refer to any such rule. It holds that the Interstate Commerce Commission was not authorized by the Act to Regulate Commerce, as it existed in 1896, to prescribe maximum, minimum or absolute rates, and that a schedule of rates filed with the Commission was not filed subject to the Commission's approval. Commission approval of the rates was not required.

subsequent reports, investigations, or hearings. Likewise, a proposed change in rates by a licensed warehouseman must be filed with the Secretary in advance of its effective date in order that the Secretary may have an opportunity to notify the warehouseman of his views if he considers the change unreasonable.[18] If a warehouseman should put into effect a change in rates regarded by the Secretary as unreasonable, his license would be subject to immediate suspension or revocation proceedings.

Petitioners also contend[19] that the prescription by the Illinois Commerce Commission of rates to be charged by federally licensed warehousemen need not necessarily conflict with the rate-making procedure contemplated by the United States Warehouse Act, and that only in the event of actual conflict would the Commission's action be superseded. The argument is that rates prescribed by the Commission must be reasonable, that rates considered reasonable by the Commission would also normally be considered reasonable by the Secretary of Agriculture, and that only in the event the Secretary should find a rate pre-

[18] It is the practice of the Secretary to examine each proposed change in rates and the reasons therefor submitted by a licensed warehouseman. In the event the Secretary objects to the proposed change, his suggestions or objections are called to the attention of the warehouseman.

[19] Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, pp. 24–32.

scribed by the Commission to be unreasonable would the State-prescribed rate be superseded. The argument relies by way of analogy on the fact that intrastate railroad rates are generally subject to regulation by the State, but that the Interstate Commerce Commission may supersede a State regulation in a particular case if it finds that a rate prescribed by the State discriminates against interstate or foreign commerce. In that event, the Interstate Commerce Commission may prescribe a nondiscriminatory rate that will supersede the rate prescribed by the State.

The argument is not sound. The United States Warehouse Act contemplates that the Secretary of Agriculture shall consider and determine the reasonableness of all rates charged by a federally licensed warehouseman for the storage of grain received in the course of interstate or foreign commerce, and his jurisdiction to determine reasonableness is made exclusive. The Illinois Public Utilities Act contemplates that the Illinois Commerce Commission shall determine the reasonableness of those same rates. The two systems are in direct conflict. In the words of the Supreme Court of South Dakota, "The collision between these acts is head on. It is but a question of which master the * * * [warehouseman] must serve."[20]

[20] *In re Farmers Cooperation Assn.*, 8 N. W. (2d) 557 (1943).

The regulation of intrastate railroad rates is not analogous to the problem under consideration. The general regulation of such rates is at the present time left to the States, and Congress has authorized the Interstate Commerce Commission to supersede a State regulation only to the limited extent necessary to prevent an intrastate rate from discriminating against interstate or foreign commerce.[21] Congress has not purported to occupy the entire field of intrastate railroad rate-making. However, in the United States Warehouse Act, Congress has provided for Federal regulation of all rates charged by a federally-licensed warehouseman in connection with interstate or foriegn commerce activities, and State regulation of the same rates would be a duplication clearly inconsistent with the Federal policy.

B. The State statutory provisions regarding discriminatory and preferential practices invoked by the Rice complaint infringe the policy of the United States Warehouse Act

The Rice complaint charges that the respondents have engaged in, or are currently engaging in, the following discriminatory and preferential practices in violation of State law:

(1) Respondents discriminate against petitioners and other grain dealers by charging them

[21] Sec. 13 (3) and (4) of the Interstate Commerce Act, *North Carolina* v. *United States*, 325 U. S. 507.

higher rates than are charged agencies of the Federal government (Par. 8, R. 17).

(2) Respondents discriminate against petitioners and other grain dealers by mixing their high quality grain with other inferior quality grain to reduce the total of the minimum quality allowed (Par. 9 (a), R. 17).

(3) Respondents discriminate against petitioners and give preferences to other grain dealers by rebating some storage charges (Par. 9 (b), R. 17).

(4) Respondents discriminate against petitioners and other grain dealers by withholding desirable transit tonnage (Par. 9 (c), R. 17).

(5) Respondents discriminate against petitioners by providing storage in old wooden warehouses carrying exorbitant insurance premium rates, although respondents also own modern warehouses carrying reasonable insurance premium rates (Par. 9 (d), R. 17).

(6) Respondents discriminate against petitioners and give preferences to other grain dealers by unduly delaying the loading of grain after the delivery of warehouse receipts and the tender of proper storage charges (Par. 9 (e), R. 18).

That all these practices are within the sphere of regulation provided by the United States Warehouse Act may be demonstrated by brief references to sections of the act and regulations issued thereunder. Rate discriminations, rebates, transit tonnage discriminations, and discriminations with

respect to preferred storage facilities are forbidden by section 13 of the act, which requires each licensed warehouseman to receive agricultural products for storage, in so far as the capacity of his warehouse permits, "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Grain is not received for storage without discrimination if it is accepted subject to discriminatory storage rates, subject to storage in inferior warehousing facilities, or subject to the furnishing of transit tonnage on a discriminatory basis.

Furthermore, with respect to the alleged rate discriminations, the record shows that the respondents have charged only those rates that are on file with the Secretary of Agriculture and that are publicly displayed as required by the act and regulations (R. 50, 52, 53, 55, 56, 59–60, 62).

With respect to the charge that grain has been improperly mixed, all fungible grain must be graded by a person licensed by the Secretary of Agriculture (Section 15); it must be graded according to official standards (Section 18); fungible grain may be mixed with other grain of the same kind and grade, but not with grain of a different grade (Section 16), unless requested by the owner (7 C. F. R. 102.50); and fungible grain must be delivered by the warehouseman in accordance with the grade and quantity named in the warehouse receipt (7 C. F. R. 102.48).

As to the charge regarding the delayed loading of grain, each warehouseman is specifically required to deliver stored products without unnecessary delay (Section 21). The Department of Agriculture has received many complaints of the violation of this requirement by Federal licensees, and it has always insisted upon and directed more prompt delivery when it found that the complaints were substantial.

All these regulatory provisions of the United States Warehouse Act are enforceable by the authority of the Secretary of Agriculture to suspend or revoke the license of a warehouseman who fails to comply (Section 25). In addition, a criminal penalty is provided for any person who fraudulently grades stored agricultural products (Section 30). It has been suggested[22] that this method of enforcement is not as effective as the method provided by State law, which permits the issuance of an order prohibiting the continuance of discriminatory and preferential practices. The adequacy of the enforcement procedure provided by the United States Warehouse Act is a matter of policy for determination by Congress, and it has no bearing on the scope of the field of regulation covered by the act.

[22] Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, p. 35.

It has also been suggested[23] that neither the license revocation procedure of section 25 nor the penal provisions of section 30 apply to discriminatory and preferential practices with respect to grain stored in the course of local business and not stored for interstate or foreign commerce. The case of *United States* v. *Hastings*, 296 U. S. 188, cited in support of the suggestion, does not necessarily support that conclusion. In any event, the record here shows that all grain stored by the respondents was covered by warehouse receipts that recited the grain was received for storage in the course of interstate or foreign commerce (R. 49–62). At the time grain is stored in a warehouse it is intermingled with the grain of other owners, and the depositor ordinarily does not know where his grain will be shipped. Even when grain is segregated in the warehouse the depositor ordinarily does not know its ultimate destination at the time the warehouse receipt is issued. The record shows that most of the grain stored by the respondents actually moved in interstate or foreign commerce. The fact that a negligible portion of the grain did not move in interstate or foreign commerce does not detract from the fact that at the time it was stored it was held for such commerce.

[23] *Ibid.*

C. The State law relating to the licensing of warehousemen, abandonment of services, and inadequacy of services invoked by the Rice complaint infringes the policy of the United States Warehouse Act

The Rice complaint charges that the respondents, in violation of State law, have provided inadequate, improper, and inefficient warehousing services resulting in the deterioration of grain stored by them (Par. 12, R. 18); have operated without State licenses (Par. 13 (h), R. 19); and have abandoned and discontinued warehousing facilities without the approval of the Illinois Commerce Commission (Par. 13 (f), R. 19).

The adequacy of the services provided by federally licensed warehousemen is specifically subjected to regulation by the United States Warehouse Act and such regulation is made exclusive by Section 29. However, aside from the provisions of Section 29, within this clearly defined field there is a precise coincidence of Federal and State regulation, the State regulation is duplicative, and it necessarily must give way.[24] When an application is made for a license, the Secretary of Agriculture is authorized to determine whether the warehouse is suitable for the proper storage of agricultural products (Section 3), and if a license is issued, the Secretary is authorized to prescribe the duties of the warehouseman with

[24] Cf. *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439.

respect to the care of and the responsibility for the agricultural products stored in the warehouse (Section 3). Each licensed warehouseman is required to make reports to the Secretary concerning the condition, contents, operation and business of his warehouse (Section 23), and the Secretary is authorized to examine agricultural products stored in the warehouse for the purpose of determining whether the warehouseman is fully performing his duties with respect thereto (Section 24). Regulations issued by the Secretary of Agriculture provide that a license will not be granted if the warehouse is not suitable for the storage of grain (7 C. F. R. 102.7); that the warehouseman must exercise the same care in regard to grain in his custody that a reasonably careful owner would exercise under the same circumstances (7 C. F. R. 102.40); and that the warehouse shall be kept clean (7 C. F. R. 102.47). The regulations also provide in detail for reconditioning grain that deteriorates through natural causes, for notifying the owner when reconditioning is not possible, and for disposal of the deteriorated grain when necessary to protect the condition of other grain stored in the warehouse (7 C. F. R. 102.53–102.55). In addition, the act requires each licensed warehouseman to provide a bond to secure the faithful performance of his obligations as a warehouseman under the act and regulations (Section 6), and any person injured by a breach of the

warehouseman's obligation may sue on the bond in his own name to recover damages for injuries sustained (Section 7).

The State requirement that a federally licensed warehouseman must also obtain a State license before he may engage in the business of storing grain for interstate or foreign commerce clearly has been superseded by the 1931 amendment of the United States Warehouse Act. A license granted by the Secretary of Agriculture under the Federal act authorizes the licensee to conduct the warehousing business in accordance with the provisions of the act. Any attempt by the State to impose additional requirements before a Federal licensee may exercise his license would be in direct derogation of the Federal act. Moreover, as has been indicated above, Section 5a (7) of the Commodity Exchange Act, 7 U. S. C. 7a (7), contains a congressional recognition of the authority of a federally licensed warehouseman to operate without a State license in the provision that receipts issued under the United States Warehouse Act must be accepted in satisfaction of futures contracts "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State."

It follows from what has been stated above that the State has no jurisdiction to control the abandonment of services by a federally licensed warehouse. So long as a warehouseman has a Federal

license he is subject to regulation by the Secretary as to the adequacy of the services he renders. Compare *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498. If by abandonment of any part of his services the warehouse is no longer suitable for the purposes for which the license was given, the warehouseman is subject to proceedings by the Secretary under the statute. If the State may not regulate the adequacy of services rendered by a warehouseman under his federal license, there is no basis for State control over the abandonment of any part of his services.

There is no limitation in the statute preventing a Federal licensee from surrendering his license at will. When he relinquishes his license, the warehouseman is subject to whatever State statutes are applicable. The fact that the warehouseman may abandon both his business and relinquish his Federal license at the same time, as suggested in the petitioner's brief, is of no significance. An examination of the provisions of the United States Warehouse Act indicates that Congress did not intend that the licensee's right to relinquish his license be restricted. Petitioner asserts that the State statute provides no protection to the petitioner's interest in the event that a warehouseman abandons his services at the same time he relinquishes his Federal license. This may be a ground for criticizing either the State or the Federal statute. It does not, however, change the fact that

so long as the warehouseman retains his Federal license he is subject to the exclusive control of the Secretary as to the adequacy of his services. It is not until he surrenders his license or it is revoked by the Secretary that he is removed from the authority of the Secretary and becomes subject to State regulation.

D. The State constitutional prohibition against a public grain warehouseman dealing in grain infringes the policy of the United States Warehouse Act

The Rice complaint charges that some of the respondents have violated Article XIII of the Illinois Constitution by dealing in grain owned and stored by them in their own warehouses. This constitutional provision has been construed by the Supreme Court of Illinois to prohibit such practice as contrary to the public policy of the State. *Hannah* v. *People*, 198 Ill. 77 (1902). The record shows that the respondents have in fact stored several million bushels of grain owned by them in their own warehouses (R. 49–62).

The pertinent provision of the United States Warehouse Act is section 18, which specifies in detail the information that must be included in each warehouse receipt issued under the act. Subsection (i) of section 18 states that "if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of

such ownership" shall be shown.[25] The purpose of this provision is to let persons who lend money and take warehouse receipts as collateral know that the property relied upon as security for the loan is in the possession of the borrower rather than a disinterested third party. The practice of a warehouseman storing his own grain is not suspect, as suggested by the petitioners. The suspicious circumstance consists only in the failure to disclose the warehouseman's interest in the grain represented by the receipt.

It is submitted that section 18 (i) evidences a Federal policy to permit a licensed warehouseman to store his own grain and to mix it with the grain of other owners if the practice is disclosed. Disclosure of the warehouseman's interest in grain covered by a warehouse receipt is the extent of the restriction Congress sought to impose. It was not the policy of Congress to prohibit the practice.

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[25] Section 18 (i) of the United States Warehouse Act is in substantially the same form as section 2 (h) of the Uniform Warehouse Receipts Act, which has been adopted by 47 states, the District of Columbia, Puerto Rico, and the Philippine Islands. 3 Uniform Laws, Annotated, 2 (h) provides in part: "Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms * * * (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership." Section 2 (h) was adopted by the State of Illinois without change. Illinois Warehouse Receipts Act, Ill. Rev. Stats. 1945, Ch. 114, sec. 234.

Prior to the amendment of the act of 1931 the policy of Congress was made subservient to the laws and public policies of the various States. In the event of conflict the State policy prevailed. However, the 1931 amendment was intended to make Federal policy prevail. Consequently, although section 18 (i) quoted above, does not affirmatively authorize a licensed warehouseman to store his own grain, the policy with respect to such storage is clear and the enforcement of the State constitutional provision in accordance with the prayer of the Rice complaint would infringe that policy.

E. The State statutory provisions relating to contracts between affiliates or with other public utilities, and relating to the issuance of securities, as invoked by the Rice complaint, probably infringe the policy of the United States Warehouse Act

The *Rice* complaint charges (R. 19) that the respondents have violated the laws of the State of Illinois by:

> (a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8a of the Public Utility Act.
>
> (b) Failing to secure prior approval of contracts, leases, etc., between such ware-

housemen and other public utilities, as required by Section 27 of the Public Utility Act.

(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act.

The pertinent provisions of the sections of the Illinois Public Utility Act cited in the complaint are set forth or summarized in the margin.[26]

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[26] *Section 8a, Illinois Public Utilities Act:* "(3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it shall first have been filed with and consented to by the commission. * * * If it be found by the commission, after investigation and a hearing, that any such contract is not in the public interest, the commission is hereby authorized to disapprove such contract. Every contract or arrangement not consented to or excepted by the commission as provided for in this section shall be void."

Section 21, Illinois Public Utilities Act: "Subject to the provisions of this Act and of the order of the commission issued as provided in this Act, a public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely: For the acquisition of property, or for the construction, extension or improvement of or addition to its facilities, or for the discharge or lawful refunding of its obligations; or for the reimbursement of moneys actually expended from income [or from certain other funds] * * * for any of the aforesaid purposes [with certain exceptions] in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of

The United States Warehouse Act contains no provisions relating expressly to the matter referred to in the Rice complaint, and the Secretary of Agriculture has not purported to exercise supervisory powers comparable to those allegedly vested in the Illinois Commerce Commission.[27] Consequently, whether the State statutory provisions in question have been superseded must depend upon whether they relate to a subject that is ancillary to the basic subject matter covered by the Federal Act or so closely related to such subject matter as to be a part of it.

The conclusion to be drawn as to this point from the record before the Court is not free from doubt. On the one hand it can be said that the

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moneys so expended and the purposes for which such expenditures were made, and the sources of the funds in the treasury of the public utility applied to such expenditures."

Section 27 of the Illinois Public Utilities Act provides that, without the prior consent and approval of the commission, no public utility may operate its lines or plants in connection with those of another public utility, may merge or consolidate its properties with those of another public utility, may acquire the property or business of another public utility, may dispose of its own property or business, may acquire the stock, bonds or notes of another public utility, may guarantee the performance of any contract or obligation of another corporation, may use any part of its assets for any enterprise not essentially and directly connected with the business of the public utility, or may invest its funds in any other enterprise.

[27] Regulations of the Secretary provide, however, that each licensed warehouseman must maintain net assets liable for the payment of any indebtedness arising from the conduct of the warehouse equal to at least ten cents per bushel of its licensed grain storage capacity (7 C. F. R. 102.6).

Federal Act does not regulate this particular subject, on the other that this type of security and contract regulation is ancillary to regulation of rates, which is covered by the federal statute.[28]

Furthermore, state supervision of contracts and securities might impair the ability of a warehouseman to undertake improvements in facilities or services required by the Secretary of Agriculture. Thus, for example, if the Secretary determined that a warehouseman could not offer suitable warehouse service without an addition to his warehouse the warehouseman might be compelled to issue securities to get adequate capital for the required improvements. Under these circumstances State review of the security issue might prevent the warehouseman from making the additions required by the Secretary.

One of the basic purposes of State regulation of a utility's contracts with affiliates and other utilities and of a utility's issuance of securities is to prevent the creation of an onerous financial structure or an impairment of assets that would affect the ability of the utility to render adequate service to the public at reasonable rates.[29] It has been shown that, with respect to federally licensed warehousemen engaged in the storage of grain for

[28] We do not mean to suggest that a State Blue Sky Law aimed at preventing fraud in the issuance of securities and the protection of investors would be inconsistent with the United States Warehouse Act.

[29] This statement of purpose is advanced in the brief for the Rice petitioner in Nos. 470, 472 (p. 53).

interstate or foreign commerce, the Federal Government has preempted the field of regulation relating to adequacy of services and reasonableness of rates. It would be anomalous for the State to regulate securities and contracts for the purpose of touching the periphery of a field that it may not occupy directly. The fact that Congress occupied those fields of regulation without providing for the precise type of controls under consideration may be said to indicate that Congress intended to accomplish its regulatory objectives without the exercise of those controls.

Supersedure of these provisions of State law is not dependent upon a grant of authority to the Secretary of Agriculture to exercise comparable regulatory jurisdiction. In this respect the case of *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, is analogous. There the Court held that the Renovated Butter Act, which regulated the production of renovated butter by prescribing the conditions under which it may be made, by making provision for the inspection of the factory and the ingredients used for manufacture, and by authorizing the seizure of the finished product if impure, superseded a State statute authorizing the seizure of impure packing stock butter (one of the ingredients of renovated butter) in the hands of a manufacturer for renovation, notwithstanding the fact that impure packing stock butter cannot be condemned under the Federal act and the impure ingredient can be traced to the fin-

ished product only with great difficulty. The Court held that State regulation was inconsistent with the regulatory policy of the Federal act, saying (p. 169):

> Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture. To uphold the power of the State of Alabama to condemn the material in the factory, while it was under federal observation and while federal enforcement deemed it wholesome, would not only hamper the administration of the federal act but would be inconsistent with its requirements. Whether the sanction used to enforce the regulation is condemnation of the material or the product is not significant. Since there was federal regulation of the materials and composition of the manufactured article, there could not be similar state regulation of the same subject.[30]

The same rationale is applicable to the present proceeding. Although Congress has not authorized the Secretary of Agriculture to regulate the execution of contracts or the issuance of securities by a federally licensed warehouseman, the

[30] The brief of the Rice petitioners in Nos. 470, 472, implies (pp. 25–26) that the *Cloverleaf* case was overruled by *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261 (1943). That implication is incorrect. Different issues were involved in the two cases and the Court's opinions are not inconsistent. See also *Hill* v. *Florida*, 325 U. S. 538, 542.

purpose of such regulation appears to be so closely related to the regulation of rates charged and services rendered by the warehouseman—which is a field of regulation specifically and exclusively occupied by Congress—that "Congress hardly intended the intrusion of another authority" in that general field.

CONCLUSION

We respectfully submit that the decision of the court below is correct in so far as the United States Warehouse Act is concerned.

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SUPREME COURT OF THE UNITED STATES

Nos. 470 AND 472.—OCTOBER TERM, 1946.

Daniel F. Rice, Joseph J. Rice, et al., etc., Petitioners, 470 *v.* Santa Fe Elevator Corporation, et al. Illinois Commerce Commission, et al., Petitioners, 472 *v.* Santa Fe Elevator Corporation, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 5, 1947.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondents in these two cases are warehousemen engaged in the business of operating public warehouses for the storage of grain in Illinois. Their warehouses are operated under licenses issued by the Secretary of Agriculture pursuant to the United States Warehouse Act, 39 Stat. 486, as amended, 7 U. S. C. § 241 *et seq.* The Rice partnership, one of the petitioners, is an owner, shipper, and dealer in grain and is a customer of respondents. The Illinois Commerce Commission, another petitioner, has certain regulatory jurisdiction, to which we will later refer, over public grain warehouses and other public utility companies.

In 1944 Rice filed a complaint with the Commission, charging respondents [1] with maintaining unjust, unreasonable, and excessive rates and charges contrary to the Illi-

[1] The Chicago Board of Trade was also joined as a defendant in the proceedings before the Illinois Commerce Commission. The issues raised concerning it are considered in the companion cases decided this day, *Rice* v. *Board of Trade*, and *Illinois Commerce Commission* v. *Board of Trade*, *post* p. —.

nois Public Utilities Act, Ill. Rev. Stats. 1945, ch. 111 2/3. It charged them with discrimination in storage rates in favor of the Federal Government and its agencies and against other customers, contrary to the Public Utilities Act and the Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, ch. 114, § 189 *et seq.* It alleged that respondents were both warehousemen and dealers in grain and by reason of those dual and conflicting positions had received undue preferences and advantages to the detriment of and in discrimination against petitioners and other customers of respondents,[2] all in violation of provisions of the Public Utilities Act, the Grain Warehouse Act, or the Illinois Constitution of 1870, Article XIII. It charged respondents with having failed to provide reasonable, safe, and adequate public grain warehouse service and facilities, with issuing securities, with abandoning service, and with entering into various contracts with their affiliates without prior approval of the Commission; with rendering storage and warehousing services without having filed and published their rates; with operating without a state license; and with mixing public grain with

[2] The preferences were alleged to have arisen from the practice of respondents in "(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade, (b) Sacrificing part of storage charges to effect purchases and sales of grain and otherwise manipulating and rebating storage charges on grain stored in private warehouse space. (c) Furnishing transit tonnage to owners of public grain of the most undesirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage. (d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance premium rates, while storing the warehousemen's own grain in modern warehouses with reasonable insurance premium rates. (e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery."

grains of different grades—all in violation of provisions of the Public Utilities Act or the Grain Warehouse Act. Among the remedies sought were the fixing of just, reasonable, and non-discriminatory rates, the prohibition of unlawful discriminatory practices, the establishment of reasonable, safe and adequate storage and warehousing service, and the assessment of penalties for violations of Illinois law, including the cancellation of grain warehouse licenses.

Respondents moved to dismiss on the ground that the United States Warehouse Act superseded the authority of the Commission to regulate in the manner sought by the complaint. The Commission denied the motion and set the cause for a hearing on the merits. Thereupon respondents brought these suits in the District Court to enjoin further proceedings before the Commission and to enjoin the Attorney General of Illinois from instituting any proceedings against respondents to enforce any order of the Commission in the matter. Motions of petitioners to dismiss were granted. On appeal the Circuit Court of Appeals reversed, holding that the United States Warehouse Act superseded state regulation of respondents as to the matters presented in petitioners' complaint.[3] 156 F. 2d 33. The cases are here on petitions for writs of certiorari which we granted because of the public importance of the questions presented.

The United States Warehouse Act, as originally enacted in 1916 (39 Stat. 486), made federal regulation in this field subservient to state regulation. It provided in § 29 that "nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen . . . ." And § 6 required an applicant for a federal warehouse license to provide a bond "to secure the faithful performance of

[3] Accord: *In re Farmers Coop. Ass'n*, 69 S. D. 191, 8 N. W. 2d 557.

his obligations as a warehouseman" under state as well as under federal law.

In 1931 Congress amended the Act. 46 Stat. 1463. Section 29 was amended [4] to provide that although the

[4] The Secretary of Agriculture who recommended the 1931 amendment to § 29 gave the following reasons:

"The amendment suggested relative to section 29 aims to make the Federal warehouse act independent of any State legislation on the subject. As the law now reads, it can be nullified by State legislation. There are conflicts at present between the State laws and the Federal act. For instance, under certain State laws warehousemen are permitted to ship the products from their warehouses to a terminal or other warehouse while the receipts are outstanding. The prime purpose of the Federal warehouse act is to make it possible to finance, properly, agricultural products while in storage. No banker can safely loan on a warehouse receipt representing a product to be in a certain warehouse when, as a matter of fact, it may be moved under authority of State law to some other and distant warehouse. The Federal warehouse act, as now worded, specifically prohibits removal of the product prior to the return of the receipts. This department emphatically believes that this requirement of the Federal act is sound and the banking fraternity generally shares that same feeling. It is at once apparent to you, of course, that if the Federal act may be nullified by State laws with respect to a feature as important as this that the value of Federal warehouse receipts might be destroyed. For that reason, then, we have suggested amending section 29 so as to make the Federal warehouse act independent of any State legislation on warehousing."

Hearings before Senate Committee on Agriculture and Forestry on H. R. 7, 71st Cong., 3d Sess., p. 10. And see *id.*, pp. 22–26.

Independent Gin & W. Co. v. *Dunwoody*, 40 F. 2d 1, arose under the law as originally enacted. It was a suit brought by warehousemen, who were licensed under the Federal Act, to enjoin officials of Alabama from enforcing provisions of Alabama warehouse law. These were provisions requiring payment of a graduated license or privilege tax, for the giving of a bond, for the obtaining of a license and for submission to state regulation concerning the suitability and adequacy of the warehouse structure, the character of records to be kept, the inspection of the warehouse buildings and the audit of the books. Agr. Code Ala. 1927, §§ 388–407. The Federal Act was construed not to exclude such state regulation.

Secretary of Agriculture "is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen", and their personnel, "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." Section 6 was amended to omit the requirement that the bond be conditioned on compliance with requirements of state law.

First. The chief matters which are the basis of the complaint before the Commission are treated as follows by the Illinois law and by the Federal Act:

(1) Just and reasonable rates. The complaint charges that respondents' rates are unjust and unreasonable. Under the Illinois statute public utility rates must be just and reasonable; and the Commission after a hearing may fix rates which meet that standard. §§ 32, 36, 41, Public Utilities Act. The Secretary of Agriculture is authorized by the Federal Act to license warehousemen [5] on condition that they conform to the requirements of the Act and the rules and regulations prescribed thereunder.[6] §§ 4, 9. Every receipt of a licensed warehouse must disclose "the rate of storage charges." § 18 (e). Before a license is granted the applicant must file his proposed rates with the Secretary. Reg. 5, § 3. He must also file any proposed changes in rates before making them effective. *Id.* Rates which are "unreasonable or exorbitant" are prohibited. *Id.* And the Secretary may, after hearing, suspend or revoke the license if "unreasonable or exorbitant charges have been made for services rendered." § 25; Reg. 2, § 7.

[5] Section 2 of the Act includes in the definition of "warehouse" every building "in which any agricultural product is or may be stored for interstate or foreign commerce . . ."

[6] The regulations are contained in 7 C. F. R., Part 102.

(2) Discrimination. The complaint alleges that respondents discriminate against the public and in favor of the Federal Government and its agencies by granting the latter preferential storage rates. The power of the Illinois Commission to fix rates, to which we have referred, includes the power to eliminate discriminatory rates. And see Grain Warehouse Act § 15. The Federal Act requires the publication and disclosure of licensed warehousemen's rates, as we have seen. Section 13 of the Federal Act makes it the duty of a licensed warehouseman to receive agricultural products for storage "in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities." And by § 25 the Secretary is granted authority to suspend or revoke any license of a warehouseman "for any violation of or failure to comply with any provision of this Act. . . ."

(3) Dual position of warehousemen. The complaint charged violations of Illinois law by acts of respondents in storing and dealing in their own grain while storing grain for the public. See *Hannah* v. *People*, 198 Ill. 77, 64 N. E. 776. The Federal Act requires every receipt issued for agricultural products by a licensed warehouseman to disclose "if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership. . . ." § 18 (i). In addition, the receipts for grain must contain "in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship. . . ." Reg. 4, § 1 (a) (3). Moreover, § 5 (a) (7) of the Commodity Exchange Act, 49 Stat. 1491, 1498, 7 U. S. C. § 7 (a) (7) provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract . . . without discrimination and notwithstanding that the warehouseman issuing such receipts is not also

licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law. . . ."

(4) Mixing high quality public grain with inferior grain owned by respondents, delay in loading grain. The complaint charges that these practices[7] are part of the abuses flowing from the conflicting positions of respondents as public grain warehousemen and dealers in grain. They are alleged to violate the rule of *Hannah* v. *People*, *supra*, and provisions of the Public Utilities Act which prohibit any preference or advantage to any person and which disallow any act of prejudice or disadvantage to any person. § 38. And see Grain Warehouse Act § 17. Section 13 of the Federal Act, as we have seen, provides that every licensed warehouseman "shall receive for storage" any agricultural product "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Section 15 provides for the inspection and grading of fungible agricultural products by federal inspectors. Section 16 permits licensed warehousemen "if authorized by agreement or by custom" to mingle fungible products with other products "of the same kind and grade." Section 16 likewise prohibits the mixing of fungible products "of different grades."[8] Section 30 provides fine and imprisonment for any person who fraudulently classifies, grades, or weighs any agricultural product stored under the provisions of the Act. Section 21 provides that a warehouseman in absence of some lawful

[7] See note 2, *supra*.

[8] The regulations promulgated under the federal Act implement these provisions. Reg. 5, § 12 provides that licensed warehousemen shall accept grain for storage and deliver grain out of storage in accordance with the grades of such grain determined by a federal inspector. Reg. 5, § 16 provides that such warehousemen shall deliver to the lawful holder of a receipt grain of the grade and quantity named in the receipt. Reg. 5, § 18 provides that grain of different grades may not be mixed except, *inter alia*, when the identity of the grain to be stored is to be preserved.

excuse shall deliver "without unnecessary delay" the stored products on proper demand.

(5) Sacrificing or rebating storage charges, retaining desirable transit tonnage, utilizing preferred storage space. These practices, charged in the complaint,[9] are alleged to be other manifestations of the evils of a public warehouseman also being a dealer in grain. They are said to be violative of the principles announced in *Central Elevator Co.* v. *People*, 174 Ill. 203, 208–209, 51 N. E. 254, 256. And these practices are said to be acts of prejudice or disadvantage outlawed by § 38 of the Public Utilities Act which we have already mentioned. On the other hand, the Federal Act, as we have seen, requires every licensed warehouseman to "receive for storage" any agricultural product "without making any discrimination between persons desiring to avail themselves of warehouse facilities." § 13.

(6) Maintenance of unsafe and inadequate elevators; inadequate and inefficient warehouse service. The complaint alleges that as a result of these practices fire insurance premiums have become exorbitant and prohibitive; that owners of grain have suffered damages due to the deterioration of grain. The Illinois Commission is granted broad powers over the maintenance of facilities which are adequate and efficient (§§ 32, 49, Public Utilities Act) including the power to order the making of additions, extensions, repairs, improvements, or changes. *Id.*, § 50. By § 3 of the Federal Act the Secretary of Agriculture is authorized "to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product . . . ." Section 3 also grants the Secretary authority to prescribe the duties of warehousemen "with respect to their care of and responsibility for agricultural products

[9] See note 2, *supra*.

stored" in licensed warehouses.[10] No license will be granted if the warehouse is found "not suitable for the proper storage of grain." Reg. 2, § 5. Every warehouseman must exercise "such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions." Reg 5, § 8. Every warehouseman must keep "his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain." Reg. 5, § 15.

(7) Operating without a state license. The complaint charges that respondents may not lawfully operate without a license from Illinois. See Grain Warehouse Act § 3. The Federal Act gives the Secretary of Agriculture authority to issue licenses on terms and conditions specified. §§ 3, 4, 5.

(8) Abandonment of warehousing service. The complaint alleges that respondents have abandoned services without consent of the Illinois commission. Approval of the Commission to abandon or discontinue service is required § 49a, Public Utilities Act. Licenses issued under the Federal Act "shall terminate as therein [§§ 4, 9] provided, or in accordance with the terms of this Act and the regulations thereunder. . . ." § 5. By § 25 the Secretary is authorized to suspend or revoke a license for any violation of the Act or the regulations. Among the grounds for revocation specified in the regulations is ceasing to conduct the licensed warehouse. Reg. 2, § 7.

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[10] And see § 23 requiring reports to the Secretary "concerning such warehouse and the condition, contents, operation, and business thereof" and providing that the licensee "shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder."

(9) Failure to file and publish rate schedules; rendering warehousing service without filing and publishing schedules. These matters, charged in the complaint, are regulated by §§ 33 and 35 of the Public Utilities Act. Under the Federal Act a warehouseman must file his rate schedules before a license issues; proposed changes in them must be filed before made; the current schedule of charges must be posted in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to the public. Reg. 5, § 3; Reg. 2, § 6.

As we have seen, Congress in 1931 made the "power, jurisdiction, and authority" of the Secretary of Agriculture conferred by the Act "exclusive with respect to all persons securing a license" under the Act, so long as the license remains in effect. It is argued by respondents that § 29 should be construed to mean that the subjects which the Secretary's authority touches may not be regulated in any way by any state agency, though the scope of federal regulation is not as broad as the regulatory scheme of the State and even though there is or may be no necessary conflict between what the state agency and the federal agency do. On the other hand, petitioners argue that since the area taken over by the Federal Government is limited, the rest may be occupied by the States; that state regulation should not give way unless there is a precise coincidence of regulation or an irreconcilable conflict between the two.

It is clear that since warehouses engaged in the storage of grain for interstate or foreign commerce are in the federal domain, *United States* v. *Hastings*, 296 U. S. 188, Congress may, if it chooses, take unto itself all regulatory authority over them (see *New York Central R. Co.* v. *New York & P. Co.*, 271 U. S. 124), share the task with the States, or adopt as federal policy the state scheme of regulation. See *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, 430–436. The question in each case is what the purpose of Congress was.

Congress legislated here in a field which the States have traditionally occupied. See *Munn* v. *Illinois*, 94 U. S. 113; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 148–149. So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 611; *Allen-Bradley Local* v. *Wisconsin Employment Board*, 315 U. S. 740, 749. Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co.* v. *Public Service Comm.*, 250 U. S. 566, 569; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines* v. *Davidowitz*, 312 U. S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co.* v. *Railroad Commission*, 236 U. S. 439; *Charleston & W. C. R. Co.* v. *Varnville Co.*, 237 U. S. 597; *New York Central R. Co.* v. *Winfield*, 244 U. S. 147; *Napier* v. *Atlantic Coast Line R. Co.*, *supra*. Or the state policy may produce a result inconsistent with the objective of the federal statute. *Hill* v. *Florida*, 325 U. S. 538. It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide. *Townsend* v. *Yeomans*, 301 U. S. 441; *Kelly* v. *Washington*, 302 U. S. 1; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177; *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202.

A forceful argument is made here for the view that the Illinois regulatory scheme should be allowed to supple-

ment the Federal Act and that the Illinois Commission should not be prevented from acting on any of the matters covered by Rice's complaint, unless what the Commission does runs counter in fact to the federal policy. That is to say, the actual operation of the state system may be harmonious with the "measure of control" over warehousemen which the Federal Act imposes. *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 23. That, it is said, can only be determined after the Illinois Commission has acted.

That argument is illustrated in several ways. The Illinois Commission may fix rates; the Secretary of Agriculture cannot. He may, to be sure, suspend or revoke licenses if unreasonable or exorbitant charges are made. If the Commission fixes unreasonable or exorbitant rates, there will be a conflict with the Federal Act and the state rate order must fall. But until it is known what the Commission will do, no conflict with the Federal Act can be shown. If indeed it reduces rates, as may be presumed, no conflict with the Federal Act will likely exist. Another illustration concerns the dual position of the warehousemen. It is pointed out that all the Federal Act requires is disclosure; that the more basic state policy of uprooting the practice of public warehousemen storing and dealing in their own grain is not inconsistent with the federal policy of disclosure. Another illustration relates to the preferential and discriminatory practices in connection with the rebate of storage charges, retention of desirable transit tonnage, and the utilization of preferred storage space. All the Federal Act requires is that warehousemen receive products for storage without making discriminations between persons. What the Illinois Commission promulgates or requires, if the proceedings before it are allowed to go ahead, might indeed strengthen and bolster the federal regulatory scheme and in no way dilute, impair or oppose it. Such reasoning could be applied to

each of the nine charges which we have summarized, even including, perhaps, the requirements for a state license and the filing and publishing of rate schedules. See *Union Brokerage Co.* v. *Jensen, supra.*

At first blush that construction of the Federal Act has great plausibility. It preserves intact the federal system of warehouse regulation, leaves the State free to protect local interests, and strikes down state power only in case what the State does in fact dilutes or diminishes the federal program.

But the special and peculiar history of the Warehouse Act indicates to us that such a construction would thwart the federal policy which Congress adopted when it amended the Act in 1931. Prior to that time, as we have pointed out, the Federal Act by reason of its express terms had been subservient to state laws relating to warehouses and warehousemen. Congress in 1931 found that condition unfavorable and undertook to change it. If Congress had done no more than to eliminate from § 29 the language which resulted in the Act's subservience, there would be a strong case for holding that state regulatory systems were not to be affected unless they collided with the Act. That construction would receive reinforcement from the provision in § 29 that the Secretary "is authorized to cooperate with State officials charged with the enforcement of State laws" relating to warehouses and warehousemen. Cf. *Union Brokerage Co.* v. *Jensen, supra,* p. 209. But Congress did not choose that simple expedient. It went further and added to § 29 the mandatory words "the power, jurisdiction, and authority" of the Secretary conferred under the Act "shall be exclusive with respect to all persons" licensed under the Act. And the original provisions of § 6 requiring a bond from licensees securing the faithful performance of their obligations as warehousemen under state law were deleted.

These actions were explained in the Committee Reports.

The previous subservience of the Act to state law was said to have militated "against the full value of Federal Warehouse receipts for collateral purposes".[11] S. Rep. No. 1775, 71st Cong., 3d Sess., p. 2. The amendment to § 6 followed "naturally" the revision of § 29. *Id.* The amendment to § 29 was designed to make "the Federal act independent of State laws" and to "place the Federal act on its own bottom." *Id.* While a warehouseman need not operate under the Act, if he chose to be licensed under it, he would then "be authorized to operate without regard to State acts and be solely responsible to the Federal act." *Id.* Warehousemen, having made their choice to operate under state or federal law, should "then be permitted to operate without interference on the part of any agency." *Id.*, pp. 2–3. Or, as stated by the House Committee, the purpose of the amendment to § 29 was to make the Act "independent of any State legislation on the subject." H. R. Rep. No. 2314, 70th Cong., 2d Sess., p. 4.

That is strong language. It makes unambiguous what was meant by the deletion from § 6 of any requirement

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[11] The Senate Report also stated, p. 2:

"Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes."

And see H. R. Rep. No. 4, 71st Cong., 1st Sess. As stated in note 4, *supra*, the amendment was recommended by the Secretary of Agriculture "so as to make the Federal warehouse act independent of any State legislation on warehousing."

that federal licensees comply with state laws regulating warehousemen. It makes clear the significance to be attached to the special wording of § 29. The amendments to § 6 and § 29, read in light of the Committee Reports, say to us in plain terms that a licensee under the federal Act can do business "without regard to State acts"; that the matters regulated by the Federal Act cannot be regulated by the States; that on those matters a federal licensee (so far as his interstate or foreign commerce activities are concerned) is subject to regulation by one agency and by one agency alone.[12] That is to say, Congress did more than make the Federal Act paramount over state law in the event of conflict. It remedied the difficulties which had been encountered in the Act's administration by terminating the dual system of regulation. Cf. *First Iowa Hydro-Electric Coop.* v. *Federal Power Commission*, 328 U. S. 152. As stated by the Supreme Court of South Dakota, warehousemen electing to come under the Federal Act need serve but one master, and that one the federal agency. *In re Farmers Cooperative Ass'n*, 69 S. D. p. 202. The cooperation which the Secretary was authorized to undertake with state officials was cooperation in harmonizing the exclusively federal and the exclusively state systems of regulation.

In this view of the Act Congress formulated a policy on numerous phases of the warehouse business.[13] The policy

[12] That is, of course, subject to those express exceptions in the Warehouse Act which subject phases of the business to state law. See *e. g.*, §§ 18 and 20.

[13] The basic program reflected in the Act was described in H. R. Rep. No. 60, 64th Cong., 1st Sess., p. 1, as follows:

"The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation

on rates was not the fixing of them but control over them through issuance, suspension, or revocation of licenses. Dual or conflicting positions of warehousemen were regulated by disclosure, by general prohibitions against discrimination between customers, by control over the license. Unsafe and inadequate warehouses were protected by the power of the Secretary to determine whether the warehouses of applicants or licensees were suitable. Mixing of grain was authorized under specified conditions and prohibited under others. On each of the nine matters charged in the complaint and listed above Congress legislated. And as we read the Act, Congress in effect said that the policy which it adopted in each of the nine was exclusive of all others; and that if a licensed warehouseman complied with each requirement, he did all that he need do. He could not be required by a State to do more or additional things or conform to added regulations, even though they in no way conflicted with what was demanded of him under the Federal Act.. We recently noted that Congress can act so unequivocally as to make clear that it intends no regulation except its own. *Bethlehem Steel Corp* v. *New York State Labor Relations Board*, 330 U. S. —.

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of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.

"The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government for the storage of staple and nonperishable agricultural products upon which uniform receipts may be issued, the weights and grades of the products specified therein having been previously determined by licensed weighers and graders in accordance with Government standards, would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products."

In these fields Congress has done just that by the 1931 amendments.

Thus, by eliminating dual regulation and substituting regulation by one agency Congress sought to achieve "fair and uniform business practices" which, as noted in *Federal Compress Co.* v. *McLean, supra,* p. 23, was the purpose of the amended Act.

The test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State. By that test each of the nine matters we have listed is beyond the reach of the Illinois Commission since on each one Congress has declared its policy in the Warehouse Act. The provisions of Illinois law on those subjects must therefore give way by virtue of the Supremacy Clause. U. S. Const., Art. VI, Cl. 2.

Second. There were matters, other than those we have mentioned, which were charged in the complaint before the Commission.

(1) Failure to secure prior approval of the Illinois Commission for management, construction, engineering, supply, financial and other contracts between respondents and affiliates. Such approval is said to be required by § 8 (a) (3) of the Public Utilities Act.

(2) Failure to secure prior approval of contracts and leases between respondents and other public utilities. Such approval is said to be required by § 27 of the Public Utilities Act.

(3) Failure to secure approval of issuance of securities payable at periods of more than twelve months after date. Such approval is said to be required by § 21 of the Public Utilities Act.

These regulatory measures, it is said, are designed to prevent unwarranted drains on utility funds or the creation of unsound financial structures which would affect

the ability of warehousemen to render adequate service at reasonable rates.

The United States Warehouse Act contains no provisions relating expressly to these three matters. And we are told that the Secretary of Agriculture has made no attempt to exercise any jurisdiction over them. But possibilities of conflict and repugnancy are conjured up. It is stated, for example, that the Secretary might determine that a warehouseman could not offer suitable warehouse service without an addition to his warehouse, that the financing of an addition might require the warehouseman to issue securities, that state disapproval of the issue might prevent the licensee from making the required additions. But it will be time to consider such asserted conflicts between the State and Federal Acts when and if they arise. Any such objections are at this stage premature. Congress has not foreclosed state action by adopting a policy of its own on these matters. Into these fields it has not moved. By nothing that it has done has it preempted those areas. And see *Federal Compress Co.* v. *McLean, supra*, p. 23. In more ambiguous situations than this we have refused to hold that state regulation was superseded by a federal law. *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261.

We accordingly affirm in part and reverse in part the judgment of the Circuit Court of Appeals and remand the cause to the District Court for proceedings in conformity with this opinion.

So ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 470 AND 472.—OCTOBER TERM, 1946.

Daniel F. Rice, Joseph J. Rice, et al., etc., Petitioners, 470 v. Santa Fe Elevator Corporation, et al. Illinois Commerce Commission, et al., Petitioners, 472 v. Santa Fe Elevator Corporation, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 5, 1947.]

MR. JUSTICE FRANKFURTER, with whom MR. JUSTICE RUTLEDGE concurs, dissenting.

More than seventy years ago this Court upheld the regulation of grain warehousing rates by Illinois and did so despite the relation of the great grain elevators to interstate commerce. *Munn* v. *Illinois*, 94 U. S. 113; and see *Budd* v. *New York*, 143 U. S. 517. State regulation of grain elevators had become so much part of our economic and political fabric, and so important was it deemed that the State laws remain in full force, that when Congress, in 1916, passed the first Warehouse Act (Part C of the Act of August 11, 1916, 39 Stat. 446, 486), it made that Act subordinate to the requirements of State laws. The Court now holds that by the 1931 Amendment to that Act, 46 Stat. 1463, Congress not only made the federal legislation independent of State law to the full scope of federal regulation, but also nullified the extensive network of State laws regulating warehouses, even though such laws, in their actual operation, in nowise conflict with the operation of the federal law. The Court thereby up-

roots a vast body of State enactments which in themselves do not collide with the licensing powers of the Secretary of Agriculture. It does so on the ground that Congress, by the 1931 Amendment, provided that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect."

The decision of the case turns on the "power, jurisdiction, and authority" that Congress has deposited with the Secretary of Agriculture to the exclusion of action by a State. I could understand, though that is not my view, a holding that once a warehouseman chooses to obtain a federal license, he is quit of amenability to State law relating to the business of warehousing as such. On the other hand, the Amendment of 1931 may be read, without violence to its language, as designed not to displace all State regulation of warehousing, but merely to prevent conflict or even concurrence as to the very matters with which the Secretary of Agriculture can deal. This would leave State law to operate where it could without impinging on the limited regulatory functions assumed by the Federal Government. Such is my view. The Court's conclusion is a kind of admixture of these two views. Today's decision, apparently, does not altogether free federally licensed warehouses from State warehouse regulation, nor yet subject them to State laws, even though these State laws may harmoniously function without impinging on the licensing powers of the Secretary. To my way of thinking, the justification for conceding an undefined area to the States equally justifies leaving to the States all that is not irreconcilable with the full exercise of the licensing authority given to the Secretary of Agriculture.

The facts of the case are not in dispute. Rice, an owner and shipper of grain, filed with the Illinois Commerce

Commission a complaint charging respondent warehouse owners with violations of the Illinois Public Utility Act (Ill. Rev. Stats. 1945, c. 111–2/3); the Illinois Grain Warehouse Act (Ill. Rev. Stats. 1945, c. 114 §§ 293–326 (a)), and Art. XIII of the Illinois Constitution. The violations charged include operation without a State license, exaction of unreasonable rates, failure to publish rates, failure to provide appropriate facilities, improper mixing of grades, discrimination in rates, and conflict of interests as grain-dealer and warehouseman. The respondents moved to dismiss the complaint on the ground that federal license placed them under the exclusive jurisdiction of the United States Warehouse Act, and the State's authority was entirely superseded. Upon denial of this motion by the Illinois Commerce Commission, respondents applied to the United States District Court for an injunction against further State proceedings. What is before us is the ruling of the Circuit Court of Appeals that the District Court had erred in not granting the injunction.

This Court now orders the proceedings before the Illinois Commerce Commission to be enjoined, without knowledge on our part what it is that Illinois would exact of respondents. It has not yet been decided by the authoritative voice of Illinois law, the Supreme Court of Illinois, which of her regulatory requirements would survive respect by that Court for the controlling federal Act. This Court has heretofore acted on the wise rule that it will not "assume in advance that a State will so construe its law as to bring it into conflict with the federal Constitution or an Act of Congress." *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 746. The suit in the District Court was, in any event, premature. It should, on familiar principles, be ordered held in the District Court until the claim of Illinois may be authoritatively ascertained in the State courts, thereby perhaps avoiding a claim of conflict

between State and federal legislation. Compare the series of cases from *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, to *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101.

On the merits of the controversy our problem is to determine what freedom to regulate its grain warehouses has been left to Illinois, after Congress exercised its constitutional power over such warehouses by adopting a licensing system to be administered by the Secretary of Agriculture under closely defined authority. Underlying the problem is the important fact that we are concerned with an economic enterprise which, while it has important radiations beyond State bounds, does not thereby lose special relations to the State in which it is conducted. And so we have once more the duty of judicially adjusting the interests of both the Nation and the State, where Congress has not clearly asserted its power of preemption so as to leave no doubt that the seperate interests of the States are left wholly to national protection.

The general considerations to be taken into account in striking a balance, and not to be acknowledged merely platonically, have been indicated in my opinion in *Bethlehem Steel Corporation* v. *New York State Labor Relations Board*, Nos. 55 and 76, this Term, 330 U. S. —. Suffice it to say that due regard for our federalism, in its practical operation, favors survival of the reserved authority of a State over matters that are the intimate concern of the State unless Congress has clearly swept the boards of all State authority, or the State's claim is in unmistakable conflict with what Congress has ordered.

Assuming that the undefined scope of Illinois law covers all the relief sought before the Illinois Commission, it is not suggested that there is actual conflict between the limited federal control through the licensing device and the policy of Illinois. Indeed, it seems to be admitted that the enforcement of the State Act might

well effectuate, at least in some aspects, the policy of the federal statute. Moreover, despite a statement in the House Report that the purpose of the 1931 Amendment was to make the Act "independent of any State legislation on the subject" (H. Rep. No. 2314, 70th Cong., 2d Sess., p. 4), the Court does not find that in making "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture . . . exclusive with respect to all persons securing a license" Congress insulated such licensed warehousemen from further regulation by a State. What the Court holds is that if Congress has touched a subject matter it becomes untouchable by the State, though there is neither paper nor operating conflict between federal and State spheres of authority. Thus, while Congress has not given to the Secretary of Agriculture rate-fixing power, Congress, it is said, has inferentially deprived Illinois of the power she has exercised for seventy years to fix grain warehouse rates.

I cannot agree. As to rates, for example, Congress has merely given the Secretary power to revoke a license if its holder charges "unreasonable or exorbitant" rates. The practical assumption, I submit, is not that Congress has put an end to the tried machinery for rate-fixing by the States without putting another in its place. It is rather that it would permit its licensing authority to avail itself of the facilities of the established rate-fixing agencies of the States and cooperate with them in ascertaining whether Illinois licensees *are* charging "unreasonable and exorbitant" rates. Such would be the practicalities of government where both State and Nation have converging yet separate interests, and such authorized collaboration between national and State governments should be the assumption in construing the Act unless Congress has left no doubt that it was so bent on avoidance of all possible conflict that it left no room for concert. Indeed, the very section which confers "exclusive" authority upon the Sec-

retary of Agriculture authorizes him "to cooperate with State officials charged with the enforcement of State laws relating to warehouses . . . ." 46 Stat. 1465.

By the United States Warehouse Act Congress did not undertake a general, affirmative regulation of warehouses, even remotely comparable to its regulation of other public utilities. The Act was initiated as warehouse receipts legislation, written with the Uniform Warehouse Receipts Act in mind. Neither the language nor the history of the 1931 Amendment marks a departure from the basic design and policy of the legislation. Congress did not see fit to establish a compulsory, uniform, nation-wide system for the regulation of grain warehouses, essential links though they be in the chain of interstate commerce. Nor did Congress authorize the Secretary of Agriculture to formulate and enforce such a system. Even in its limited aspect, the Act does not apply to all warehouses affecting interstate commerce. Indeed, Congress exercised no compulsion over any warehouse. Congress merely offered to those who desired it the privilege of being a federal licensee. Anyone who wished might continue to operate as a warehouseman without a federal license. As to these there is no question but that State law controls. And even those who obtain a federal license cannot be compelled to perform any positive duties. Except for certain penalties for fraud, the only sanction for disobedience of the few duties imposed is loss of the license.

Congress was content to allow two warehousemen in similar circumstances to operate under different rules if one chose to seek a federal license and the other did not. It offered perquisites incident to such a license to a warehouseman who wanted them. Such a scheme does not persuasively indicate a purpose to free such a federal licensee from regulations to which others are subject and which are not in practical conflict with the requirements of the federal law. For instance, has Congress really ex-

pressed with reasonable clarity its purpose to forbid to the States the fixing of warehouse rates and thus deprive the States of a long-standing regulatory power which the United States chose not to assume? Is it not more consistent with a proper regard for the interplay of State and national interests to assume that Congress was imposing a minimum of regulation for those who accepted federal licenses rather than to assume that by inferential sterilization of State laws Congress meant to make its optional and restricted requirements the maximum? The "power, jurisdiction, and authority" of the Secretary of Agriculture which after 1931 was to be "exclusive" are given full and fair scope if made to refer only to powers that the Secretary can effectively exercise. There is exclusion of State power as to what the Act, substantively speaking, includes, but not exclusion of a vast potential field of warehouse regulation, not within the active range of federal administration, simply because Congress dealt with a small part of it, and that only conditionally.

Nor is there anything in the history of the federal Act which requires such destructive consequences to a long-standing body of State enactments. When the 1916 Act was passed, Congress emphasized the need for State regulation by subordinating federal action to such regulation. By 1931 forty States had laws regulating warehouses, laws which at least in some aspect did not conflict with the powers vested in the Secretary of Agriculture. An impressively large number of States fixed warehouse rates. The Court now finds in the legislative history of the 1931 Amendment a purpose to wipe out all these regulations as to the holders of federal licenses.

That Amendment eliminated the subservience of the federal Act to the laws of the States, for such subservience really nullified the practical purposes at which Congress aimed in 1916 by a voluntary federal licensing system. The purpose was to make "the Federal Act independent

of State laws," and to "place the Federal Act on its own bottom." While such language in a Committee Report, treated merely as words, might be interpreted as an implicit, roughshod decimation of State authority over any aspect of warehousing which the federal licensing system touched, howsoever meagerly and indirectly, it is more consonant with a due regard for federal-State relations to find that the dominating object of the legislation controls what was meant by "independent of State laws." For the dominant object was removal of those matters which were entrusted to the Secretary of Agriculture from subordination to State action. By saving the authority which it had given to the Secretary of Agriculture from being rendered futile by State laws, Congress ought not to be held to have nullified State laws whose continuing force would not hamper the Secretary of Agriculture in exercising the powers that Congress gave him. Evidence is lacking that Congress felt that the correction of the inadequacy which had revealed itself regarding the 1916 Act required withdrawal of federal license holders from the requirements of non-conflicting State regulation. So long as full scope can be given to the amendatory legislation without undermining non-conflicting State laws, nothing but the clearest expression should persuade us that the federal Act wiped out State fixation of rates and other State requirements deeply rooted in their laws. When neither the mischief at which the 1931 Amendment was directed, nor the policy, terms and structure of warehousing legislation by Congress in its entirety necessitate it, disregard of the delicate balance of federal-State relations ought not to be attributed to Congress.

If so fundamental a change were designed, it would normally be reflected in the financial provisions made by Congress, and in the reports on the administration of the Act. The appropriations for administering the United States Warehouse Act show no substantial increase as a

consequence of the 1931 Amendment. For the years preceding and those immediately following the Amendment, the appropriations were:

1929 (45 Stat. 539, 563)	$240,320
1930 (45 Stat. 1189, 1214)	256,000
1931 (46 Stat. 392, 419)	241,000
1932 (46 Stat. 1242, 1270)	312,200
1933 (47 Stat. 609, 638)	312,020
1934 (47 Stat. 1432, 1460)	296,220
1935 (48 Stat. 467, 494)	271,383*

Moreover, those charged with the enforcement of the Act seem to have been unmindful of the far-reaching consequences now imputed to it. The reports of the Secretary of Agriculture, of the Chief of the Bureau of Agricultural Economics, and of the Chief of Agricultural Marketing Service, for the years after 1931, disclose administrative attitudes and practices no different from those of preceding years. No mention is made of the State laws which, the Court now holds, were superseded though not conflicting with federal administration. In citing the advantages incident to a federal license, no mention appears of so important an item as relief from existing State regulations.

The history of the federal act shows that at no time has Congress deemed it desirable to introduce compulsory uniformity of warehouse regulation. By freeing federal licensees from overriding State regulation Congress was not by indirection seeking to create such a uniform system. But the effect of the interpretation now given to the 1931 Amendment is the establishment of uniformity of non-regulation, in that it introduces *laissez faire* outside the very narrow scope of the Secretary's powers. It is easy to

*The more substantial increases in appropriation after 1935 seem to be due to an increase in the volume of licensing, not to an extension of the fields of supervision.

exaggerate the danger of undesirable consequences flowing from a rejected construction. But surely one does not draw on idle fears in suggesting that as a result of today's decision the gates of escape from deeply rooted State requirements will be open, although Congress itself has not authorized federal authority to take over the regulation of such activities and though their State enforcement does not at all conflict with, but rather promotes, the limited oversight of warehouses thus far assumed by the Federal Government. The Court displaces settled and fruitful State authority though it cannot replace it with federal authority.